

(25,314)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 1031.

P. L. CRANE, APPELLANT,

vs.

HIRAM W. JOHNSON, GOVERNOR OF THE STATE OF
CALIFORNIA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF CALIFORNIA.

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1 & 2 Supreme Court of the United States.

P. L. CRANE, Appellant,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Appellees.

TRANSCRIPT OF RECORD.

Upon Appeal from the District Court of the United States of America in and for the Southern District of California, Southern Division.

3 *Names and Addresses of Attorneys.*

For Appellant: Tom L. Johnston, Esq., 221 O. T. Johnson Building, Los Angeles, California.

For Appellees: U. S. Webb, Esq., Attorney General of the State of California, Sacramento, California; Robert M. Clarke, Esq., Assistant to the Attorney General of the State of California, Los Angeles, California; Thomas Lee Woolwine, Esq., District Attorney of the County of Los Angeles, Los Angeles, California; George E. Cryer, Esq., Deputy District Attorney of the County of Los Angeles, Los Angeles, California.

4 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-18. Equity.

P. L. CRANE, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California; Thomas Lee Woolwine, District Attorney of Los Angeles County, Defendants.

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

To HIRAM W. Johnson, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney in and for the County of Los Angeles, State of California:

You and each of you are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be held at

the city of Washington in the District of Columbia, on the 10th day of June, 1916, pursuant to an Order allowing an Appeal, filed and entered in the Clerk's office of the District Court of the United States for the Southern District of California, Southern Division, from a final decree filed and entered on the 8th day of April, 1916, in that certain suit being in equity No. C-18, wherein P. L. Crane is Complainant and Appellant and you are defendants and Appellee to show cause, if any there be, why the decree rendered against said Appellant as in the said Order allowing appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. O. A. Trippet, United States District Judge for the Southern District of California, Southern Division, this
5 12th day of April, A. D. 1916, and of the independence of the United States, the one hundred and fortieth.

OSCAR A. TRIPPET,
*United States District Judge for the Southern District
of California, Southern Division.*

Received copy of the foregoing Citation on Appeal and hereby acknowledge service, this, the 12th day of April, 1916.

U. S. WEBB, *Attorney General*;
ROBERT M. CLARKE, *Deputy*;
THOMAS LEE WOOLWINE,

By GEO. E. CRYER, *Ch. Dep.*,
Solicitors for Defendants and Appellees.

6 [Endorsed:] No. C-18. Equity. United States District Court, Southern District of California, Southern Division. P. L. Crane, Plaintiff, vs. Hiram W. Johnson et al., Defendants. Citation on Appeal. Received copy of within — this 12 day of April, 1916. U. S. Webb, Att'y Gen.; Robert M. Clarke, Thomas Lee Woolwine, Geo. E. Cryer, Attorneys for Defendant. Tom L. Johnston, Esq., Attorney for Plaintiff. F. 2194. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

7 In the District Court of the United States in and for the Southern District of California, Southern Division.

No. C-18. Equity.

P. L. CRANE, Complainant,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

8 In the District Court of the United States in and for the Southern District of California, Southern Division.

In Equity.

P. L. CRANE, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Bill of Complaint.

P. L. Crane, as complainant brings this, his Bill of Complaint against said defendants and each of them and thereupon your orator complains and says:

I.

Complainant is a citizen of the United States of America, over the age of twenty-one years, and resides in the City of Los Angeles, County of Los Angeles, and the State of California.

II.

That Hiram W. Johnson is the Governor of the State of California; that U. S. Webb is Attorney General of the State of California; and that Thomas Lee Woolwine is the District Attorney of the County of Los Angeles, in the State of California, and that said last named defendants in their respective capacities named, are holding office under by virtue of the laws of the State of California.

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III.

Complainant is a drugless practitioner and for the last seven years has been actively engaged in the practice of his said profession as a drugless practitioner in the City and County of Los Angeles, in the State of California; that complainant has a large and dependant family and that he is dependent entirely on the proceeds of the sale of his labor and services as a drugless practitioner for their main-

tenance and support; that complainant does not employ either medicine, drugs or surgery in his practice as a drugless practitioner, as aforesaid nor is there anything in his practice that is harmful to the individual or dangerous to society, but that complainant does employ in his practice as a drugless practitioner faith, hope and the processes of mental suggestion and mental adaptation.

IV.

Under the laws of the State of California it is the duty of the Attorney General thereof amongst other things, to attend the Supreme Court of said State and to prosecute or defend all cases to which said state is a party, and when required by the public service or directed by the governor, to repair to any county in the State to assist the District Attorney thereof in the discharge of his duties, and it is the duty of the District Attorney of Los Angeles County to attend the Superior Court and other courts, and conduct on behalf of the People of the State of California, all prosecutions for public offenses.

V.

That the legislature of the State of California at its Fortieth Session beginning on Monday, January 6th, and which adjourned on Tuesday, May 12th, 1913, enacted the following law: which was approved by the Governor on June 2, 1913, and went into effect August 10th, 1913, in words and figures as follows, to-wit:

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"Chapter 354.

An act to regulate the examination of applicants for license, and the practice of those licensed, to treat diseases, injuries, deformities, or other physical or mental conditions of human beings; to establish a board of medical examiners, to provide for their appointment and prescribe their powers and duties, and to repeal an act entitled, "An act for the regulation of the practice of medicine and surgery, osteopathy, and other systems or modes of treating the sick or afflicted, in the State of California, and for the appointment of a board of medical examiners in the matter of said regulation," approved March 14, 1907, and acts amendatory thereof, and also to repeal all other acts and parts of acts in conflict with this act.

(Approved June 2, 1913, In effect August 10, 1913.)

The People of the State of California do enact as follows:

Section 1. A board of medical examiners to consist of ten members, and to be known as the "board of medical examiners of the state of California," is hereby created and established. The governor shall appoint the members of the board, each of whom shall have been a citizen of this state for at least five years next preceding his appointment. Each of the members shall be appointed from among persons who hold licenses under any of the medical practice acts of this state. The governor shall fill by appointment all vacan-

cies on the board. The term of office of each member shall be four years; provided, that of the first board appointed, three members shall be appointed for one year, two for two years, two for three years and three for four years, and that thereafter all appointments shall be for four years, except that appointments to fill vacancies shall be for the unexpired term only. No person in any manner owning any interest in any college, school or institution engaged in

11 medical instruction shall be appointed on the board, nor shall more than one member of the board be appointed from the faculty of any one university, college, or other educational institution. The governor shall have power to remove from office any member of the board for neglect of duty required by this act, for incompetency, or for unprofessional conduct. Each member of the board shall, before entering upon the duties of his office, take the constitutional oath of office.

Sec. 2. The board shall be organized on or before the first Tuesday of September, 1913, by electing from its number a president, vice-president, secretary and treasurer, who shall hold their respective positions during the pleasure of the board. The board shall hold one meeting annually beginning on the second Tuesday in January in the city of Sacramento and at least two additional meetings annually, one of which shall be held in the City of San Francisco and the other in the City of Los Angeles, with power of adjournment from time to time until its business is concluded; provided, however, that examinations of applicants for certificates may, in the discretion of the board, be conducted in any part of the state designated by the board. Special meetings of the board may be held at such time and place as the board may designate. Notice of each regular or special meeting shall be given twice a week for two weeks next preceding each meeting in one daily paper published in the City of San Francisco, one published in the City of Sacramento, and one published in the City of Los Angeles, which notice shall also specify the time and place of holding the examination of applicants. The board shall receive through its secretary applications for certificates provided to be issued under this act and shall, on or before the first day of January of each year, transmit to the governor a full report of all its proceedings together with a report of its receipts and disbursements. The board shall, on or before the first day

12 of January of each year, compile a complete directory giving the addresses of all persons within the State of California who hold unrevoked licenses to practice under any medical practice act of the State of California, which license shall in any manner authorize the treatment of human beings for diseases, injuries, deformities, or any other physical or mental conditions. The board is hereby authorized to require said persons to furnish such information as it may deem necessary to enable it to compile the directory. The directory shall contain in addition to the names and addresses of said persons, the names and symbols indicating the title, name or names, school or schools, which such person has attended and from which graduated, the date of issuance of the license, the present residence of said person and a statement of the former cer-

tificate held. The directory shall be prima facie evidence of the right of the person or persons named therein to practice. It shall be the duty of every person holding a license to practice under any medical act of this state, or who may hereafter be so licensed to practice, to report immediately each and every change of residence, giving both the old and the new address.

Sec. 3. The office of the board shall be in the city of Sacramento and in all legal proceedings against the board said city shall be deemed to be the residence of the members thereof.

Sec. 4. The board may from time to time adopt such rules as may be necessary to enable it to carry into effect the provisions of this act. It shall require the affirmative vote of seven members of said board to carry any motion or resolution, to adopt any rules, to pass any measure, or to authorize issuance of any certificate as in this act provided. Any member of the board may administer oaths in all matters pertaining to the duties of the board, and the board shall have authority to take evidence in any matter cognizable by it.

The board shall keep an official record of all its proceedings,
13 a part of which record shall consist of a register of all applicants for certificates under this act, together with the action of the board upon each application.

Sec. 5. The board is authorized to prosecute all persons guilty of violation of the provisions of this act. It shall have the power to employ legal counsel for such purpose, and may also employ such clerical assistance as it may deem necessary to carry into effect the provisions of this act. The board may fix the compensation to be paid for such service and may incur such other expenses as it may deem necessary. It shall also fix the salary of the secretary, not to exceed the sum of eighteen hundred dollars (\$1800) per annum, and the sum to be paid to other members of the board, not to exceed ten dollars (\$10) per diem each, for each and every day of actual service in the discharge of official duties; and the board may, in its discretion, add to said sum necessary traveling expenses.

Sec. 6. All fees collected on behalf of the board of medical examiners, and all receipts of every kind and nature, shall be reported at the beginning of each month, for the month preceding, to the state controller, and at the same time the entire amount of such collections shall be paid into the state treasury, and shall be credited to a fund to be known as the board of medical examiners' contingent fund, which fund is hereby created. Such contingent fund shall be for the uses of the board of medical examiners and out of it shall be paid all salaries and all other expenses necessarily incurred in carrying into effect the provisions of this act. An amount not to exceed one thousand dollars (\$1000) may be drawn from the contingent fund herein created, to be used as a revolving fund where cash advances are necessary; but expenditures from such revolving
fund must be substantiated by vouchers and itemized state-
14 ments at the end of each fiscal year, or at any other time when demand therefor is made by the board of control.

Sec. 7. Every application for a certificate shall pay to the secretary of the board a fee of twenty-five dollars (\$25), which shall be

paid to the treasurer of the board by said secretary. In case the applicant's credentials are insufficient or in case he does not desire to take the examination, the sum of ten dollars (\$10) shall be retained, the remainder of the fee being returnable on application.

Sec. 8. Two forms of certificates shall be issued by said board under the seal thereof and signed by the president and secretary; first, a certificate authorizing the holder thereof to use drugs or what are known as medicinal preparations in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, or other physical or mental conditions, which certificate shall be designated "physician and surgeon certificate"; second, a certificate authorizing the holder thereof to treat diseases, injuries, deformities, or other physical or mental conditions without the use of drugs or what are known as medicinal preparations and without in any manner severing or penetrating any of the tissues of human beings except the severing of the umbilical cord, which certificate shall be designated "drugless practitioner certificate." A "reciprocity certificate" shall also be issued under the provisions herein-after specified. Any of these certificates on being recorded in the office of the county clerk, as hereinafter provided, shall constitute the holder thereof a duly licensed practitioner in accordance with the provisions of his certificate.

Sec. 9. Every applicant must file with the board, at least two weeks prior to the regular meeting thereof, satisfactory testimonials of good moral character, and a diploma or diplomas issued by some legally chartered school or schools approved by the board, the requirements of which school or schools shall have been at the time of granting such diploma or diplomas in no degree less than those required under this act, or satisfactory evidence of having possessed such diploma or diplomas, and must file an affidavit stating that he is the person named in said diploma or diplomas, and that he is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination without fraud or misrepresentation; provided, that in addition thereto, each applicant for a "physician and surgeon certificate" must show that he has attended four courses of study, each such course to have been of not less than thirty-two weeks' duration, but not necessarily pursued continuously or consecutively, and that at least ten months shall have intervened between the beginning of any course and the beginning of the preceding course; provided, further, that an applicant for a "drugless practitioner certificate" must show that he has attended two courses of study, each such course to have been of not less than thirty-two weeks' duration, but not necessarily pursued continuously or consecutively, and that at least ten months shall have intervened between the beginning of any course and the beginning of the preceding course; provided, also, that before July 1, 1918, in lieu of the diploma or diplomas and preliminary requirements herein referred to where the applicant can show to the satisfaction of the board of medical examiners that he has taken courses hereinafter required in a school or

schools approved by the board totaling for applicants for "drugless practitioner certificates" not less than sixty-four weeks consisting of not less than twenty-four hundred hours, and for "physician and surgeon certificates" totaling not less than one hundred
 16 twenty-eight weeks consisting of not less than forty-eight hundred hours, it being required that all applicants shall have received passing grades in all such courses, that the applicant or applicants shall be admitted to examination for their respective form of certificates.

The said application shall be made upon a blank furnished by said board and it shall contain such information concerning the medical instruction and the preliminary education of the applicant as the board may by rule prescribe. In addition to the requirements hereinabove provided for, applicants for either form of certificate hereunder shall present to said board at the time of making such application a diploma from a California high school or other school in the State of California requiring and giving a full four years' course of same grade, or other schools elsewhere, requiring and giving a full four years' standard high school course, or its equivalent, approved by the board, together with satisfactory proof that he is the lawful holder of such diploma and that the same was procured in the regular course of instruction. In lieu of such diploma, the applicant may present: (1) a certificate from the college entrance examination board, or the college examining board of any state or territory showing that such applicant has successfully passed the examination of said board: or (2) if such applicant be thirty years or more of age he may show to the satisfaction of the board of medical examiners proof of preliminary education equivalent in training power to the foregoing requirements. After January 1, 1919, every applicant for a "physician and surgeon certificate" shall in addition to the foregoing requirements, present to the board satisfactory evidence that before beginning the study of medicine he has completed a course which includes at least one year of work, of college grade, in each of the subjects of physics, chemistry and biology.

Sec. 10. Applicants for either form of certificate shall
 17 file satisfactory evidence of having pursued in any legally chartered school or schools, approved by the board, a course of instruction covering and including the following minimum requirements:

For "Physician and Surgeon Certificate."

Group 1. 825 hours.

Anatomy	600 hours
Embryology	75 hours
Histology	150 hours

Group 2. 620 hours.

Elementary chemistry and toxicology.....	140 hours
Advanced chemistry	180 hours
Physiology	300 hours

Group 3. 700 hours.

Elementary bacteriology	60 hours
Advanced bacteriology	100 hours
Hygiene	90 hours
Pathology	450 hours

Group 4. 240 hours.

Materia medica	80 hours
Pharmacology	105 hours
Therapeutics	55 hours

Group 5. 1120 hours.

Dermatology and syphilis	45 hours
General medicine and general diagnosis.....	700 hours
Genito-urinary diseases	45 hours
Nervous and mental diseases.....	180 hours
Pediatrics	150 hours

Group 6. 965 hours.

Laryngology, otology, rhinology	60 hours
Opthalmology	60 hours
Surgery, and surgical diagnosis.....	500 hours
Orthopedic surgery	45 hours
Physical therapy, including electrotherapy, X-ray, radiography, hydrotherapy	300 hours

Group 7. 300 hours.

Gynecology	105 hours
Obstetrics	195 hours

Miscellaneous. 30 hours.

Ethics, jurisprudence, etc.	30 hours
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Total	4,800 hours
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18 For a "Drugless Practitioner Certificate."

Group 1. 645 hours.

Anatomy	510 hours
Histology	135 hours

Group 2. 420 hours.

Elementary chemistry and toxicology.....	120 hours
Physiology	300 hours

Group 3. 375 hours.

Elementary bacteriology	60 hours
Hygiene	45 hours
Pathology	270 hours

Group 4. 420 hours.

Diagnosis	420 hours
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Group 5. 260 hours.

Manipulative and mechanical therapy	260 hours
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Group 6. 300 hours.

Gynecology	105 hours
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Obstetrics	195 hours
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Total	2,400 hours
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In the course of study herein outlined the hours required shall be actual work in the class room, laboratory, clinic or hospital, and at least eighty (80) per cent of actual attendance shall be required; provided, that the hours herein required in any one subject need not exceed seventy-five (75) per cent of the number specified, but that the total number of hours in all the subjects of each group shall not be less than the total number specified for such group.

Sec. 11. In addition to above requirements, all applicants for "physician and surgeon certificates" must pass an examination to be given by the board in the following subjects:

1. Anatomy and histology.
2. Physiology.
3. Bacteriology and pathology.
4. Chemistry and toxicology.
5. Obstetrics and gynecology.
6. Materia medica and therapeutics, pharmacology, including prescription writing.
7. General medicine, including clinical microscopy.
8. Surgery.
9. Hygiene and sanitation.

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All applicants for "drugless practitioner certificates" must pass an examination in the following subjects:

1. Anatomy and histology,
2. Physiology,
3. General diagnosis,
4. Pathology and elementary bacteriology,
5. Obstetrics and gynecology,
6. Toxicology and elementary chemistry,
7. Hygiene and sanitation;

provided, that a person who holds a "drugless practitioner certificate" and who presents evidence of having successfully completed the additional courses required for the "physician and surgeon certificate" as hereinbefore provided, shall be permitted to take his examination in subjects required for a "physician and surgeon certificate" without being re-examined in "drugless practitioner" subjects.

All examinations shall be practical in character and designed to ascertain the applicant's fitness to practice his profession, and shall

be conducted in the English language, and at least a portion of the examination in each of the subjects shall be in writing. There shall be at least ten questions on each subject, the answers to which shall be marked on a scale of zero to one hundred. Each applicant must obtain no less than a general average of seventy-five per cent, and not less than sixty per cent in any two subjects; provided, that any applicant shall be granted a credit of one per cent upon the general average for each year of actual practice since graduation; provided, further, that any applicant for "physician and surgeon certificate" obtaining seventy-five (75) per cent each in seven subjects, and any applicant for "drugless practitioner certificate" obtaining seventy-five per cent each in five subjects shall be subsequently re-examined in those subjects only in which he failed, and without additional fee.

The examination papers shall form a part of the records of the board, and shall be kept on file by the secretary for a period of one year after each examination. In said examination the applicant shall be known and designated by number only, and the name attached to the number shall be kept secret until after the board has finally voted upon the application. The secretary of the board shall in no instance participate as an examiner in any examination held by the board. All questions on any subject in which examination is required under this act shall be provided by the board of medical examiners upon the morning of the day upon which examination is given in such subject, and when it shall be shown that the secretary or any member of the board has in any manner given information in advance of or during examination to any applicant it shall be the duty of the governor to remove such person from the board of medical examiners, or from the office of secretary.

All certificates issued hereunder must state the extent and character of practice which is permitted thereunder and shall be in such form as shall be prescribed by the board.

Sec. 12. Any medical director, medical inspector, passed assistant surgeon, or assistant surgeon of the United States navy, honorably discharged, or temporarily detached, or placed upon the retired list without being discharged, from the medical department of the United States navy, or who by resignation has honorably severed all connection with the service, and any surgeon of the United States army, honorably discharged, or temporarily detached or placed upon the retired list without being discharged from the medical department of the United States army, or who by resignation has honorably severed all connection with the service, is hereby authorized to practice medicine and surgery within the State of California, by filing a sworn copy of his discharge, if he be discharged, or of the order temporarily detaching him or the order placing him upon the retired list, with the state board of medical examiners or by proving to the satisfaction of the board that by resignation he has honorably left the services of either the army or navy, and paying said board a fee of fifty dollars (\$50); provided, however, that this provision shall not apply to any contract surgeon in

the United States army or navy, and shall not apply to any officer of medical reserve corps of either said army or navy.

Sec. 13. Said board must also issue a "physician and surgeon certificate" to any applicant, without any examination, authorizing the holder thereof to practice medicine and surgery in the State of California, upon payment of a registration fee of fifty dollars (\$50.00), upon the following terms and conditions and upon satisfactory proof thereof, viz.: The applicant shall produce a certificate entitling him to practice medicine and surgery, as provided for in said "physician and surgeon certificate", issued either by the medical examining board, or by any other board or officer authorized by the law to issue a certificate entitling such applicant to practice medicine and surgery, either in the District of Columbia, or in any state or territory of the United States, or if such certificate shall have been lost, then a copy thereof, with proof satisfactory to the board of medical examiners of the State of California that the copy is a correct copy. Said certificate must not have been issued to such applicant prior to the first day of August, 1901, and the requirements from the medical college from which such applicant may have graduated, and the requirements of the board which was legally authorized to issue such certificate permitting such applicant to practice medicine and surgery shall not have been, at the time such certificate was issued, in any degree or particular less than those which were required for the issuance of a certificate to practice medicine and surgery in the State of California at the date of the issuance

22 of such certificate, or which may hereafter be required by law and which may be in force at the time of the issuance of any such certificate; and provided, further, that said applicant shall also furnish from the board which issued said certificate, evidence satisfactory to the board of medical examiners of the State of California, showing what the requirements were of the college, or board, issuing such certificate, at the date of such issuance. If, after an examination of such certificate, and the production on the part of the applicant of such further reasonable evidence of the said requirements as may be deemed necessary by the board of medical examiners of the State of California, and any other or further examination or investigation which said board may see fit to make, on its own part, it shall be found that the requirements of the board issuing such certificate, were when said certificate was issued, in any degree or particular less than the requirements provided by the laws of the State of California, at the date of the issuance of such certificate, he will not be entitled to practice within the State of California without an examination. Any person may file an application with the said board to practice medicine and surgery within the State of California, in the event that such applicant has been duly licensed prior to August 1, 1901, and has practiced medicine and surgery in another state or territory, or the District of Columbia, for a period of time commencing prior to the first day of August, 1901. Such application shall be verified and shall contain a statement showing: (a) the full name of the applicant; (b) all institutions at which he has studied and the period of such study, and all

institutions from which he has graduated; (c) a statement of whatever certificate or certificates to practice medicine and surgery may have been issued to him, together with the date of such certificate and a description of the same, and, if required by the board, the certificates themselves, or satisfactory proof of their issuance; (d)

23 a statement of all places in which said applicant has practiced medicine and surgery; (e) such other general information as to his past practice, as may be required by the said board. The said board shall make such independent investigation of the character, ability and standing of the applicant as it may deem proper and necessary, and if it shall find after such investigation that said applicant has been a practicing physician and surgeon in any other state of territory or the District of Columbia, prior to August 1, 1901, and prior to said last named date has been duly licensed to so practice, and that his reputation as such physician and surgeon is good in the community in which he has so practiced medicine and surgery, they shall afford him an examination on a day suiting the convenience of the board not more than six (6) months subsequent to the presentation of said application. Said examination shall be oral, practical and clinical in nature, and full consideration shall be given to the duration and character of the applicant's practice. If after such last mentioned examination it is determined by a majority vote of the said medical examiners conducting said examination, that such applicant is so qualified to practice medicine and surgery within the State of California, and that his reputation and standing in the community in which he has previously practiced is good, the said applicant shall be entitled to receive a "physician and surgeon certificate." Each applicant on making such application shall pay to the secretary of the board, a fee of fifty dollars (\$50), which shall be paid to the treasurer of the board, of which sum forty dollars (\$40) shall be returned to him should he not receive a certificate hereunder. All certificates issued pursuant to this section shall be marked across the face thereof "reciprocity certificate."

Sec. 14. Said board must refuse a certificate to any applicant guilty of unprofessional conduct. On the filing with the

24 secretary of a sworn complaint, charging the applicant with having been guilty of unprofessional conduct, the secretary must forthwith issue a citation, under the seal of the board, and make same returnable at the next regular session of said board, occurring at least thirty days next after filing the complaint. Such citation shall notify the applicant when and where the charges of said unprofessional conduct will be heard and that the applicant shall file his written answer, under oath, within twenty days next after the service on him of said citation, or that default will be taken against him and his application for a certificate refused. The attendance of witnesses at such hearing may be compelled by subpoenas issued by the secretary of the board under its seal. Said citation and said subpoenas shall be served in accordance with the statutes of this state then in force as to the service of citations and subpoenas generally, and all the provisions of the statutes of this

state then in force relating to subpoenas and to citations are hereby made applicable to the subpoenas and citations provided for herein. Upon the secretary's certifying to the fact of refusal of any person to obey a subpoena or citation to the superior court of the county in which the service was had, said court shall thereupon proceed to hear said matter in accordance with the statutes of this state then in force as to contempts for disobedience of process of the court, and should said court find that the subpoena or citation has been legally served, and that the party so served has wilfully disobeyed the same, it shall proceed to impose such penalty as provided in cases of contempt of court. In all cases of alleged unprofessional conduct arising under this act, depositions of witnesses may be taken, the same as in civil cases, and all the provisions of the statutes of this state then in force as to the taking of depositions are hereby made

25 applicable to the taking of depositions under this act. If the applicant shall fail to file with the secretary of said board, his answer, under oath, within twenty days after service on him of said citation, or within such further time as the board may allow, and the charges on their face shall be deemed sufficient by the board, default shall be entered against him, and his application refused. If the charges on their face be deemed sufficient by the board, and issue be joined thereon by answer, the board shall proceed to determine the matter, and to that end shall hear such proper evidence as may be adduced before it; and if it appear to the satisfaction of the board that the applicant is guilty as charged, no certificate shall be issued to him. No certificate shall be refused on the ground of unprofessional conduct unless the applicant has been guilty of such conduct within two years next preceding his application. Whenever any holder of a certificate herein provided for is guilty of unprofessional conduct, as the same is defined in this act, and the said unprofessional conduct has been brought to the attention of the board granting said certificate, in the manner hereinafter provided, or whenever a certificate has been procured by fraud or misrepresentation, or issued by mistake, or the person holding such certificate is found to be practicing contrary to the provisions thereof and of this act, it shall be the duty of said board either to suspend the right of the holder of said certificate to practice for a period not exceeding one year, or in its discretion to remove his certificate. In the event of such suspension, the holder of such certificate shall not be entitled to practice thereunder during the term of suspension; but upon the expiration of the term of said suspension, he shall be reinstated by the board and shall be entitled to resume his practice, unless it shall be established to the

satisfaction of the board that said person so suspended from
26 practice has, during the term of such suspension, practiced in the State of California, in which event the board shall revoke the certificate of such person. No such suspension or revocation shall be made unless such holder is cited to appear and the same proceedings are had as is hereinbefore provided in this section in case of refusal to issue certificates. Said secretary in all cases of

suspension or revocation shall enter on his register the fact of such suspension or revocation, as the case may be, and shall certify the fact of such suspension or revocation under the seal of the board, to the county clerk of the counties in which the certificate of the person whose certificates has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register of the certificate of such person, the following: "The holder of this certificate was on the — day of — suspended for —" or, "This certificate was revoked on the — day of —," as the case may be, giving the day, month, and year of such revocation, or length of suspension, as the case may be, in accordance with said certification to him by said secretary. The record of such suspension or revocation so made by said county clerk shall be prima facie evidence of the fact thereof, and of the regularity of all the proceedings of said board in the matter of said suspension or revocation. The words, "unprofessional conduct," as used in this act, are hereby declared to mean:

First. The procuring or aiding or abetting in procuring of a criminal abortion.

Second. The wilfully betraying of a professional secret.

Third. All advertising of medical business which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, and so be harmful or injurious to public
27 morals or safety.

Fourth. All advertising of any medicine or of any means whereby the monthly periods of woman can be regulated or the menses re-established if suppressed.

Fifth. Conviction of any offense involving moral turpitude, in which case the record of such conviction shall be conclusive evidence.

Sixth. Habitual intemperance.

Seventh. The personation of another licensed practitioner.

Eighth. The use, by the holder of any certificate, in any sign or advertisement in connection with his said practice, or in any advertisement or announcement of his practice, of any fictitious name, or any name other than his own.

Ninth. The use, by the holder of a "drugless practitioner certificate," of drugs or what are known as medicinal preparations, in or upon any human being, or the severing or penetrating by the holder of said "drugless practitioner certificate" of the tissues of any human being in the treatment of any disease, injury, deformity, or other physical or mental condition of such human being, excepting the severing of the umbilical cord.

Tenth. Advertising, announcing or stating, directly, indirectly, or in substance, by any sign, card, newspaper advertisement, or other written or printed sign or advertisement, that the holder of such certificate or any other person, company or association by which he is employed or in whose service he is, will cure or attempt to cure, or will treat, any venereal disease, or will cure or attempt to cure or treat any person or persons for any sexual disease, for lost

manhood, sexual weakness, or sexual disorder; or being employed by, or being in the service of, any person, firm, association, or corporation so advertising, announcing, or stating.

Eleventh. The use by the holder of a "drugless practitioner certificate" of the letters "M.D.," or the words "doctor of medicine," or the term "physician and surgeon," or the term "physician," or the term "surgeon," in connection with his name or in connection with his practice, or otherwise, upon any sign, card, advertisement, or announcement, or otherwise.

Sec. 15. Every person holding a certificate under the laws of this state authorizing him to practice any system or mode of treating the sick or afflicted in this state must have it recorded in the office of the county clerk of the county or counties in which the holder of said certificate is practicing his profession, and the fact of such recordation shall be indorsed on the certificate by the county clerk recording the same. Any person holding a certificate as aforesaid, who shall practice or attempt to practice any other system or mode of treating the sick or afflicted in this state, without having first filed his certificate with the county clerk, as herein provided, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), or by imprisonment for a period of not less than thirty days nor more than sixty days, or by both such fine and imprisonment.

Sec. 16. The county clerk shall keep (in) a book provided for the purpose a complete list of the certificates recorded by him, with the date of the record; and said book shall be open to public inspection during his office hours.

Sec. 17. Any person who shall practice or attempt to practice, or who advertises or holds himself out as practicing any system or mode of treating the sick or afflicted in this state, or who shall diagnose, treat, operate for, or prescribe for, any disease, injury, deformity, or other mental or physical condition of any person, without having at the time of so doing a valid unrevoked certificate as provided in this act, or who shall in any sign or in any advertisement use the word "doctor," the letters or prefix "Dr.," the letters, "M. D.," or any other terms or letters indicating or implying that he is a doctor under the terms of this or any other act, or that he is entitled to practice hereunder, or under any other law, without having at the time of so doing a valid unrevoked certificate as provided in this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than six hundred dollars (\$600.00), or by imprisonment for a term of not less than sixty (60) days nor more than one hundred and eighty (180) days, or by both such fine and imprisonment. Upon each such conviction the fine shall be paid, when collected, to the state treasurer, and a report thereof shall be made to the state controller.

Sec. 18. Any person, or any member of any firm, or official of any company, association, organization or corporation shall be guilty of a misdemeanor and upon conviction thereof shall be pun-

ishable by imprisonment in the county jail for not less than ten (10) days nor more than one (1) year, or by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00), or by both such fine and imprisonment, who, individually, or in his official capacity, shall himself sell or barter, or offer to sell or barter any certificate authorized to be granted hereunder, or any diploma, affidavit, transcript, certificate or any other evidence required in this act for use in connection with the granting of certificates or diplomas, or who shall purchase or procure the same either directly or indirectly with intent that the same shall be fraudulently used, or who shall with fraudulent intent alter any diploma, certificate, transcript, affidavit, or any other evidence to be used in

obtaining a diploma or certificate required hereunder, or who shall use or attempt to use fraudulently any certificate, transcript, affidavit or diploma, whether the same be genuine or false, or who shall practice or attempt to practice any system of treatment of the sick or afflicted, under a false or assumed name, or any name other than that prescribed by the board of medical examiners of the State of California on its certificate issued to such person authorizing him to administer such treatment, or who shall assume any degree or title not conferred upon him in the manner and by the authority recognized in this act, with intent to represent falsely that he has received such degree or title, or who shall wilfully make any false statement or any application for examination, license or registration under this act, or who shall engage in the treatment of the sick, or afflicted, without causing to be displayed in a conspicuous manner and in a conspicuous place in his office the name of each and every person who is associated with or employed by him in the practice of medicine and surgery or other treatment of the sick or afflicted, or who shall, within ten days after demand made by the secretary of the board, fail to furnish to said board the name and address of all such persons associated with or employed by him or by any company or association with which he is or has been connected at any time within sixty (60) days prior to said notice, together with a sworn statement showing under and by what license or authority said person or persons, or said employee or employees, is or are, or has or have been, practicing medicine or surgery, or any other system of treatment of the sick or afflicted (provided that such affidavit shall not be used as evidence against said person or employee in any proceedings under this section.)

Sec. 19. Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in or entitled to, such certificate, shall be guilty of a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery.

Sec. 20. Any person not a member of the state board of medical examiners who shall sign, or issue, or cause to be signed or issued, any certificates authorized by this act, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than six hundred (\$600.00), or by

imprisonment for a term not less than sixty (60) nor more than one hundred and eighty (180) days, or by both such fine and imprisonment.

Sec. 21. Nothing in this act shall be construed to prohibit the practice by any person holding an unrevoked certificate heretofore issued under or validated by any medical practice act of this state, but all such certificates may be revoked for unprofessional conduct in the same manner and upon the same grounds as if they had been issued under this act.

Sec. 22. Nothing in this act shall be construed to prohibit service in the case of emergency, or the domestic administration of family remedies; nor shall this act apply to any commissioned medical officer in the United States army, navy or marine hospital, or public health service, in the discharge of his official duties; nor to any licensed dentist when engaged exclusively in the practice of dentistry. Nor shall this act apply to any practitioner from another state or territory, when in actual consultation with a licensed practitioner of this state, if such practitioner is, at the time of such consultation, a licensed practitioner in the state or territory in which he resides; provided, that such practitioner shall not open an office or appoint a place to meet patients or receive calls within the limits of this state. Nor shall this act be construed so as to discriminate against any particular school of medicine or surgery, or any
32 other treatment, nor to regulate, prohibit or to apply to, any kind of treatment by prayer, nor to interfere in any way with the practice of religion.

Sec. 23. An act entitled "An act for the regulation of the practice of medicine and surgery, osteopathy, and other systems or modes of treating the sick or afflicted, in the State of California, and for the appointment of a board of medical examiners in the matter of said regulation," approved March 14, 1907, as amended by a certain act approved March 19, 1909, as amended by a certain act approved May 1, 1911, is hereby repealed, and also all other acts and parts of acts in conflict with this act are hereby repealed."

VI.

That the Legislature of the State of California, at its Forty-first session which began on Monday, January 4th, and adjourned on Sunday, May 9th, 1915, passed the following law amending the foregoing act, in words and figures as follows, to-wit:

An Act to amend an act entitled, "An act to regulate the examination of applicants for license, and the practice of those licensed, to treat diseases, injuries, deformities, or other physical or mental conditions of human beings; to establish a board of medical examiners, to provide for their appointment and prescribe their powers and duties, and to repeal an act entitled 'An act for the regulation of the practice of medicine and surgery, osteopathy, and other systems and modes of treating the sick or afflicted, in the State of California, and for the appointment of a Board of medical examiners in the matter of said regulation,' approved March 14, 1907, and acts amendatory thereof, and also to repeal all other acts and parts of acts in conflict with this act" approved June 2, 1913, by amending sections two, three, four, five, eight, nine, ten, eleven, twelve, thirteen, fourteen, seventeen and eighteen and adding a new section thereto to be numbered twelve and one-half relating to the practice of chiropody.

(Approved April 24, 1915. In effect August 8, 1915.)

The People of the State of California do enact as follows:

Section 1. Section two of "An act to regulate the examination of applicants for license, and the practice of those licensed, to treat diseases, injuries, deformities, or other physical or mental conditions of human beings; to establish a board of medical examiners, to provide for their appointment and prescribe their powers and duties, and to repeal an act entitled 'An act for the regulation of the practice of medicine and surgery, osteopathy, and other systems or modes of treating the sick or afflicted, in the State of California, and for the appointment of a board of medical examiners in the matter of said regulation,' approved March 14, 1907, and acts amendatory thereof, and also to repeal all other acts and parts of acts in conflict with this act," approved June 2, 1913, is hereby amended to read as follows:

Sec. 2. The board shall be organized on or before the first Tuesday of September, 1913, by electing from its number a president, vice-president, and a secretary who shall also be the treasurer, who shall hold their respective positions during the pleasure of the board. The board shall hold one meeting annually beginning on the second Tuesday in January in the City of Sacramento and at least two additional meetings annually, one of which shall be held in the City of Los Angeles and the other in the City of San Francisco, with power of adjournment from time to time until its business is concluded; provided, however, that examinations of applications for certificates may, in the discretion of the board, be conducted in any part of the state designated by the board. Special meetings of the board may be held at such time and place as the board may designate. Notice of each regular or special meeting shall be given twice a week for two weeks next preceding each meeting in one daily paper published in the City of San Francisco, one published in the City of Sacra-

mento, and one published in the City of Los Angeles, which notice shall also specify the time and place of holding the examination of applicants. The secretary of the board upon an authorization from the president of the board or the chairman of a committee, may call meetings of any duly appointed committee of the board at a specified time and place and it shall not be necessary to advertise such committee meetings. The board shall receive through its secretary applications for certificates provided to be issued under this act and shall, on or before the first day of January of each year, transmit to the governor a full report of all its proceedings together with a report of its receipts and disbursements. The board shall, on

35 or before the first day of January of each year, compile and thereafter publish and sell, a complete directory giving the addresses of all persons within the State of California who hold unrevoked licenses to practice under any medical practice act of the State of California, which license shall in any manner authorize the treatment of human beings for diseases, injuries, deformities, or any other physical or mental conditions. The board is hereby authorized to require said persons to furnish such information as it may deem necessary to enable it to compile the directory. The directory shall contain in addition to the names and addresses of said persons, the names and symbols indicating the title, name or names, school or schools, which such person has attended and from which graduated, the date of issuance of the license, the present residence of said person and a statement of the form of certificate held. The directory shall be prima facie evidence of the right of the person or persons named therein to practice. It shall be the duty of every person holding a license to practice under any medical act of this state or who may hereafter be so licensed to practice, to report immediately each and every change of residence, giving both the old and the new address.

Sec. 2. Section three of the said act is hereby amended to read as follows:

Sec. 3. The office of the board shall be in the City of Sacramento. Sub-offices may be established in Los Angeles and San Francisco and such records as may be necessary may be transferred temporarily to such sub-offices. Legal proceedings against the board may be instituted in any one of said three cities.

Sec. 3. Section four of the said act is hereby amended to read as follows:

Sec. 4. The board may from time to time adopt such rules as may be necessary to enable it to carry into effect the provisions of this act. It shall require the affirmative vote of seven mem-
36 bers of said board to carry any motion or resolution, to adopt any rules, to pass any measure, or to authorize the issuance of any certificate as in this act provided. Any member of the board may administer oaths in all matters pertaining to the duties of the board, and the board shall have authority to take evidence in any matter cognizable by it. The Board may in its discretion appoint or designate any qualified and competent person or persons to give the whole or any portion of any examination as provided in this act; such per-

son or persons need not be a member of the board of medical examiners and shall be designated as a commissioner on examination and shall be subject to the same rules and regulations and entitled to the same fee and remuneration as if a member of the board. The board shall keep an official record of all its proceedings, a part of which record shall consist of a register of all applicants for certificates under this act, together with the action of the board upon each application.

Sec. 4. Section five of the said act is hereby amended to read as follows:

Sec. 5. The board is authorized to prosecute all persons guilty of violation of the provisions of this act. It shall have the power to employ legal counsel for such purpose, and may also employ inspectors, special agents and investigators and such clerical assistance as it may deem necessary to carry into effect the provisions of this act. The board may fix the compensation to be paid for such service and may incur such other expenses as it may deem necessary. It shall also fix the salary of the secretary, not to exceed the sum of three thousand dollars per annum, and the sum to be paid to other members of the board not to exceed ten dollars per diem each for each and every day of actual service in the discharge of official duties; such service to include the attendance at special meetings of the board and committee meetings of the board and while actively engaged in the review of examination papers, based upon one per diem for each thirty papers or fraction thereof. Each member of the board shall make an affidavit before some duly authorized person in the State of California that such service has been actually performed; and the board may in its discretion, add to said sum necessary traveling expenses.

Sec. 5. Section eight of the said act is hereby amended to read as follows:

Sec. 8. Three forms of certificates shall be issued by said board under the seal thereof and signed by the president and secretary; first, a certificate authorizing the holder thereof to use drugs or what are known as medicinal preparations in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, or other physical or mental conditions, which certificate shall be designated "physician and surgeon certificate"; second, a certificate authorizing the holder thereof to treat diseases, injuries, deformities, or other physical or mental conditions without the use of drugs or what are known as medicinal preparations and without in any manner severing or penetrating any of the tissues of human beings except the severing of the umbilical cord, which certificate shall be designated "drugless practitioner certificate"; third, a certificate authorizing the holder thereof to practice chiropody. For the purpose of this act chiropody is defined to be the surgical treatment of abnormal nails and superficial excrescences occurring on the feet, such as corns, callosities, and the treatment of bunions; but it shall not confer the right to operate upon the feet for congenital or acquired deformities, or for conditions requiring the use of anesthetics other

38 than local, or incisions involving structures below the level of the true skin. A "reciprocity certificate" shall also be issued under the provisions hereinafter specified. Any of these certificates on being recorded in the office of the county clerk, as hereinafter provided, shall constitute the holder thereof a duly licensed practitioner in accordance with the provisions of his certificate.

Sec. 6. Section nine of the said act is hereby amended to read as follows:

Sec. 9. Every applicant must file with the board, at least two weeks prior to the regular meeting thereof, satisfactory testimonials of good moral character, and a diploma or diplomas issued by some legally chartered school or schools approved by the board, the requirements of which school or schools shall have been at the time of granting such diploma or diplomas in no degree less than those required under this act, or satisfactory evidence of having possessed such diploma or diplomas, and must file an affidavit stating that he is the person named in said diploma or diplomas, and that he is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination without fraud or misrepresentation; provided, that in addition thereto, each applicant for a "physician and surgeon certificate" must show that he has attended four courses of study, each such course to have been of not less than thirty-two weeks' duration, but not necessarily pursued continuously, or consecutively, and that at least ten months shall have intervened between the beginning of any course and the beginning of the preceding course; provided, further, that an applicant for a "drugless practitioner certificate" must show that he has attended two courses of study, each such course to have been of not less than thirty-two weeks' duration, but not necessarily pursued continuously or consecutively, and that at least ten months shall have intervened

39 between the beginning of any course and the beginning of the preceding course; the course in chiropody is to consist of not less than thirty-nine weeks consisting of not less than six hundred sixty-four hours; provided, also, that before July 1, 1918, in lieu of the diploma or diplomas and preliminary requirements herein referred to where the applicant can show to the satisfaction of the board of medical examiners that he has taken courses hereinafter required in a school or schools approved by the board totaling for applicants for "drugless practitioner certificate" not less than sixty-four weeks consisting of not less than two thousand hours and for "physician and surgeon certificate" totaling not less than one hundred twenty-eight weeks consisting of not less than four thousand hours it being required that all applicants shall have received passing grades in all such courses, that the applicant or applicants shall be admitted to examination for their respective form of certificates.

The said application shall be made upon a blank furnished by said board and it shall contain such information concerning the medical instruction and the preliminary education of the applicant

as the board may by rule prescribe. In addition to the requirements hereinabove provided for, applicants for any form of certificate hereunder shall present to said board at the time of making such application a diploma from a California high school or other school in the State of California requiring and giving a full four years' course of same grade, or other schools elsewhere, requiring and giving a full four years' standard high school course, or its equivalent, approved by the board, together with satisfactory proof that he is the lawful holder of such diploma and that the same was procured in the regular course of instruction. The passing of an examination before the entrance examining board for the entrance to the academic department of the University of California

or Stanford University or the University of Southern California, or the possession of documentary evidence of admission to the academic department of such institutions as a regular student or in full standing shall be sufficient basic or preliminary educational qualifications. In lieu of such diploma, the applicant may present: (1) a certificate from the college entrance examination board, or the college examining board of any state or territory showing that such applicant has successfully passed the examination of said board; or (2) if such applicant be thirty years or more of age he may show to the satisfaction of the board of medical examiners proof of preliminary education equivalent in training power to the foregoing requirements. After January 1, 1919, every applicant for a "physician and surgeon certificate" shall in addition to the foregoing requirements, present to the board satisfactory evidence that before beginning the last half of the second year in the study of medicine he has completed a course which included at least one year of work, of college grade, in each of the subjects of physics, chemistry and biology. The preliminary or basic educational requirements for a chiropodist shall be as follows: On and after July 1, 1915, the successful completion of one year of high school work or its equivalent; on and after July 1, 1918, two years of high school work or its equivalent; on and after July 1, 1920, three years of high school work or its equivalent; on and after July 1, 1922, four years of high school work or its equivalent.

Sec. 7. Section ten of the said act is hereby amended to read as follows:

Sec. 10. Applicants for any form of certificate shall file satisfactory evidence of having pursued in any legally chartered school or schools, approved by the board, a course of instruction covering and including the following minimum requirements:

41 For a "Physician and Surgeon Certificate."

Group 1. 775 hours.

Anatomy	550 hours.
Embryology	75 hours.
History	150 hours.

Group 2. 620 hours.

Elementary chemistry and toxicology	140 hours.
Advanced chemistry	180 hours.
Physiology	300 hours.

Group 3. 450 hours.

Elementary bacteriology	60 hours.
Advanced bacteriology	80 hours.
Hygiene	60 hours.
Pathology	250 hours.

Group 4. 240 hours.

Materia medica	80 hours.
Pharmacology	105 hours.
Therapeutics	55 hours.

Group 5. 940 hours.

Dermatology and syphilis	45 hours.
General medicine and general diagnosis	600 hours.
Genito-urinary diseases	45 hours.
Nervous and mental diseases	110 hours.
Pediatrics	140 hours.

Group 6. 680 hours.

Laryngology, otology, rhinology	60 hours.
Ophthalmology	60 hours.
Surgery and surgical diagnosis	500 hours.
Orthopedic surgery	30 hours.
Physical therapy, including electrotherapy, X-ray, radiography, hydrotherapy	30 hours.

Group 7. 265 hours.

Gynecology	100 hours.
Obstetrics	165 hours.

Miscellaneous, 30 hours.

Ethics, jurisprudence, etc.	30 hours.
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Total	4,000 hours.
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For a "Drugless Practitioner Certificate."

Group 1. 600 hours.

Anatomy	485 hours.
Histology	115 hours.

42 Group 2. 270 hours.

Elementary chemistry and toxicology	70 hours.
Physiology	200 hours.

Group 3. 235 hours.

Elementary bacteriology	40 hours.
Hygiene	45 hours.
Pathology	150 hours.

Group 4. 370 hours.

Diagnosis	370 hours.
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Group 5. 260 hours.

Manipulative and mechanical therapy	360 hours.
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Group 6. 265 hours.

Gynecology	100 hours.
Obstetrics	165 hours.

Total	2,000 hours.
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For a Certificate to Practice Chiropody.

Group 1. 117 hours.

Anatomy	78 hours.
Histology	39 hours.

Group 2. 156 hours.

Chemistry and toxicology	78 hours.
Physiology	78 hours.

Group 3. 103 hours.

Bacteriology	39 hours.
Hygiene	25 hours.
Pathology	39 hours.

Group 4. 44 hours.

Diagnosis:	
Syphilis	20 hours.
Dermatology	24 hours.

Group 5. 215 hours.

Manipulative and mechanical therapy:	
Didactic and clinical chiropody	136 hours.
Orthopedics	20 hours.
Surgery	59 hours.

Group 6. 29 hours.

Materia medica and therapeutics	29 hours.
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Total	664 hours.
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43 In the course of study herein outlined the hours required shall be actual work in the classroom, laboratory, clinic or hospital, and at least eighty (80) per cent of actual attendance shall

be required; provided, that the hours herein required in any one subject need not exceed seventy-five (75) per cent of the number specified, but that the total number of hours in all the subjects of each group shall not be less than the total number specified for such group.

Section 8. Section eleven of the said act is hereby amended to read as follows:

Sec. 11. In addition to above requirements, all applicants for "physician and surgeon certificate" must pass an examination to be given by the board in the following subjects:

1. Anatomy and histology.
2. Physiology.
3. Bacteriology and pathology.
4. Chemistry and toxicology.
5. Obstetrics and gynecology.
6. Materia medica and therapeutics, pharmacology, including prescription writing.

7. General medicine, including clinical microscopy.

8. Surgery.

9. Hygiene and sanitation.

All applicants for "drugless practitioner certificates" must pass an examination in the following subjects:

1. Anatomy and histology.
2. Physiology.
3. General diagnosis.
4. Pathology and elementary bacteriology.
5. Obstetrics and gynecology.
6. Toxicology and elementary chemistry.
7. Hygiene and sanitation.

Provided, that a person who holds a "drugless practitioner certificate," issued upon satisfactory proof of the course of instruction and minimum requirements demanded in section 10 hereof and who presents evidence of having successfully completed the additional courses required for the "physician and surgeon certificate" as hereinbefore provided, shall be permitted to take his examination in subjects required for a "physician and surgeon certificate" without being re-examined in "drugless practitioner" subjects.

44 The subjects for such examination shall be:

1. Advanced chemistry.
2. Advanced bacteriology.
3. Surgery.
4. Materia medica and therapeutics, pharmacology, including prescription writing.

5. General medicine, including clinical microscopy.

All applicants for a certificate to practice chiropody must pass an examination in the following subjects:

1. Anatomy and histology.
2. Physiology, chemistry and hygiene.
3. Pathology and bacteriology.
4. Dermatology and syphilis.
5. Orthopedics and surgery.

6. Chiroprody and therapeutics.

All examinations shall be practical in character and designed to ascertain the applicant's fitness to practice his profession, and shall be conducted in the English language, and at least a portion of the examination in each of the subjects shall be in writing. There shall be at least ten questions on each subject, the answer to which shall be marked on a scale of zero to one hundred. Each applicant must obtain no less than a general average of seventy-five per cent, and not less than sixty per cent in any two subjects; provided, that any applicant shall be granted a credit of one per cent upon the general average for each year of actual practice since graduation; provided, further, that any applicant for "physician and surgeon certificate" obtaining seventy-five per cent each in seven subjects and any applicant for "drugless practitioner certificate" obtaining seventy-five per cent each in five subjects and an applicant for a certificate to practice chiroprody obtaining over seventy-five per cent in seven subjects, shall be subsequently re-examined in those subjects only in which he failed, and without additional fee. Any person who at any time prior to January 1, 1916, shall pay to the secretary of said board the fee of twenty-five dollars and submits satisfactory proof of a good moral character and of a resident one-year course of not less than one thousand hours in a legally chartered school ap-

proved by the board and satisfactory proof of three years of
45 actual practice of a drugless system of the healing art, such three years of actual practice to have been in the State of California, shall be admitted to the drugless practitioner examination; provided, however, that in the event of a license being granted to such applicant he will not be eligible thereafter for the physician's and surgeon's certificate without a full and complete compliance with the terms and provisions of sections 9 and 10 hereof. Any one who shall pay the fee of fifty dollars to the secretary of the board prior to January 1, 1916, and submits to the board satisfactory proof of good moral character and proof of six years' actual practice of a drugless system of the healing art, three years of which must have been in the State of California, and satisfactory proof of a resident one-year course of not less than one thousand hours in a legally chartered school approved by the board and upon proof of competency in a drugless system may be granted a certificate to practice a drugless system in this state; provided, however, that such licensee shall not be permitted to take the physician's and surgeon's examination without a full and complete compliance with the terms of sections 9 and 10 hereof.

The examination papers shall form a part of the records of the board, and shall be kept on file by the secretary for a period of one year after each examination. In said examination the applicant shall be known and designated by number only, and the name attached to the number shall be kept secret until after the board has finally voted upon the application. The secretary of the board shall in no instance participate as an examiner in any examination held by the board. All questions on any subject in which examination is required under this act shall be provided by the board of

medical examiners upon the morning of the day upon which examination is given in such subject, and when it shall be shown that the secretary or any member of the board has in any
46 manner given information in advance of or during examination to any applicant it shall be the duty of the governor to remove such person from the board of medical examiners, or from the office of secretary.

All certificates issued hereunder must state the extent and character of practice which is permitted thereunder and shall be in such form as shall be prescribed by the board.

Sec. 9. Section twelve of the said act is hereby amended to read as follows:

Sec. 12. Any medical director, medical inspector, passed assistant surgeon, or assistant surgeon of the United States navy, honorable discharged or temporarily detached, or placed upon the retired list without being discharged or on active duty, from the medical department of the United States navy, or who by resignation has honorably severed all connection with the service, and any surgeon of the United States army, honorably discharged, or temporarily detached or placed upon the retired list without being discharged or on active duty from the medical department of the United States army, or who by resignation has honorably severed all connection with the service, is hereby authorized to practice medicine and surgery within the State of California by filing a sworn copy of his discharge, if he be discharged, or of the order temporarily detaching him or the order placing him upon the retired list, with the state board of medical examiners or by proving to the satisfaction of the board that by resignation he has honorably left the service of either the army or navy, and paying said board a fee of fifty dollars; provided, however, that this provision shall not apply to any contract surgeon in the United States army or navy, and shall not apply to any officer of medical reserve corps of either said army or navy.

Sec. 10. Said act is hereby amended by adding a new section
47 thereto to be numbered section twelve and one-half, to read as follows:

Sec. 12 $\frac{1}{2}$. Any person who at any time within ninety days from and after the passing of this act shall pay to said board the registration fee of fifty dollars, as herein provided, and furnish to said board satisfactory proof of the fact that such applicant has been actually engaged in the practice of chiropractic in the State of California for the period of one year prior to July 1, 1915, and that such applicant possesses a good moral character and competency in the practice of chiropractic, shall be entitled to practice chiropractic, and said board must issue to him a chiropractic certificate.

Sec. 11. Section thirteen of the said act is hereby amended to read as follows:

Sec. 13. Said board must also issue a certificate to practice a system or mode of treating the sick or afflicted recognized by this act or any preceding practice act in the State of California to any applicant, without any examination, authorizing the holder thereof to practice a system or mode of treating the sick or afflicted in the

State of California, upon payment of a registration fee of fifty dollars, upon the following terms and conditions, and upon satisfactory proof thereof, viz: The applicant shall produce a certificate entitling him to practice a system or mode of treating the sick or afflicted, as provided in this act or any preceding practice act of the State of California, issued either by the medical examining board, or by any other board or officer authorized by the law to issue a certificate entitling such applicant to practice a system or mode of treating the sick or afflicted either in the District of Columbia or in any state or territory of the United States, or if such certificate shall have been

- lost, then a copy thereof, with proof satisfactory to the board
- 48 of medical examiners of the State of California that the copy is a correct copy. Said certificate must not have been issued to such applicant prior to the first day of August, 1901, and the requirements from the college from which such applicant may have graduated, and the requirements of the board which was legally authorized to issue such certificate permitting such applicant to practice a system or mode of treating the sick or afflicted (medicine and surgery) shall not have been at the time such certificate was issued, in any degree or particular less than those which were required for the issuance of a similar certificate to practice a system or mode of treating the sick or afflicted in the State of California, at the date of the issuance of such certificate, or which may hereafter be required by law and which may be in force at the date of the issuance of any such certificate; and, provided, further, that said applicant shall furnish from the board which issued said certificate, evidence satisfactory to the board of medical examiners of the State of California showing what the requirements were of the college and of the board, issuing such certificate at the date of such issuance. If, after an examination of such certificate, and the production on the part of the applicant of such further reasonable evidence of the said requirements as may be deemed necessary by the board of medical examiners of the State of California and any other or further examination or investigation which said board may see fit to make on its own part, it shall be found that the requirements of the board issuing such certificate were, when said certificate was issued, in any degree or particular less than the requirements provided by the law of the State of California at the date of the issuance of such certificate or that the applicant has not been a resident of the state from which the application is based for a period of one year subsequent to the issuance of such certificate he will not be entitled to practice within the State of California without *out* an examination.
- 49 An oral examination shall not be deemed to be of equal merit with a written examination and no certificate shall be issued in the case where a written examination was given in California and an applicant was given an oral examination in another state at the same time. The board is hereby authorized to enter into a contract or contracts of reciprocity with other states wherein the standard of such states is not in any degree or particular less than were the requirements in the State of California in the same

year, for the issuance of a certificate to practice a system or mode of treating the sick or afflicted, such certificate to be similar in scope of practice as the certificate issued in the other state; provided, however, that an application based upon a certificate to practice any system or mode of treating the sick or afflicted issued in the District of Columbia or in any state or territory prior to March fourth, 1907, if refused or denied by reason of the insufficiency of the standard of such state or territory then such applicant may have the privilege of either a written or oral examination before the board at the option of the applicant. Any person may file an application with the said board to practice medicine and surgery within the State of California, in the event that such applicant has been duly licensed prior to August 1, 1901, and has practiced medicine and surgery in another state or territory or the District of Columbia, for a period of time commencing prior to the first day of August, 1901. Such application shall be verified and shall contain a statement showing: (a) the full name of the applicant; (b) all institutions at which he has studied and the period of such study, and all institutions from which he has graduated; (c) a statement of whatever certificate or certificates to practice medicine and surgery may have been issued to him, together with the date of such certificate and a description of the same, and, if required by the board, the certificates themselves, or satisfactory proof of their issuance; (d) a statement of all places in which said applicant has practiced medicine and surgery; (e) such other general information as to his past practice, as may be required by the said Board. The said board shall make such independent investigation of the character, ability and standing of the applicant as it may deem proper and necessary, and if it shall find after such investigation that said applicant has been a practicing physician and surgeon in any other state or territory or the District of Columbia, prior to August 1, 1901, and prior to said last named date has been duly licensed so to practice, and that his reputation as such physician and surgeon is good in the community in which he has so practiced medicine and surgery, and has been a resident of his last state of residence for a period of one year prior to date of filing his application in the State of California they shall afford him an examination on a day suiting the convenience of the board not more than six months subsequent to the presentation of said applications. Said examination shall be oral, practical, and clinical in nature, and full consideration shall be given to the duration and character of the applicant's practice. If after such last mentioned examination it is determined by a majority vote of said medical examiners conducting said examination, that such applicant is so qualified to practice medicine and surgery within the State of California, and that his reputation and standing in the community in which he has previously practiced is good, the said applicant shall be entitled to receive a "physician and surgeon certificate." Each applicant on making such application shall pay to the secretary of the board, a fee of fifty dollars, which shall be paid to the treasurer of the

51 board, of which sum forty dollars shall be returned to him should he not receive a certificate hereunder. All certificates issued pursuant to this section shall be marked across the face thereof "reciprocity certificate."

Sec. 12. Section fourteen of the said act is hereby amended to read as follows:

Sec. 14. Said board must refuse a certificate to any applicant guilty of unprofessional conduct. On the filing with the secretary of a sworn complaint, charging the applicant with having been guilty of unprofessional conduct, the secretary must forthwith issue a citation, under the seal of the board, and make same returnable at the next regular session of said board, occurring at least thirty days next after filing the complaint. Such citation shall notify the applicant when and where the charges of said unprofessional conduct will be heard and that the applicant shall file his written answer, under oath, within twenty days next before the service on him of said citation or that default will be taken against him and his application for a certificate refused. The attendance of witnesses at such hearing may be compelled by subpoenas issued by the secretary of the board under its seal. Said citation and said subpoenas shall be served in accordance with the statutes of this state then in force as to the service of citation and subpoenas generally, and all the provisions of the statutes of this state then in force relating to subpoenas and to citations are hereby made applicable to the subpoenas and citations provided for herein. Upon the secretary's certifying to the fact of refusal of any person to obey a subpoena or citation to the superior court of the county in which the service was had, said court shall thereupon proceed to hear said matter in accordance with the statutes of this state then in force as to contempts for disobedience of process of the court, and should said court find that the subpoena or citation has been legally served, and that the party so served has willfully disobeyed the same, it shall proceed to impose such penalty as provided in cases of contempt of court. In all cases of alleged unprofessional conduct arising under this act, depositions of witnesses may be 52 taken, the same as in civil cases and all the provisions of the statutes of this state then in force as to the taking of depositions are hereby made applicable to the taking of depositions under this act. If the applicant shall fail to file with the secretary of said board his answer under oath, within twenty days after service on him of said citation, or within such further time as the board may allow, and the charges on their face shall be deemed sufficient by the board, default shall be entered against him, and his application refused. If the charges on their face be deemed sufficient by 53 the board, and issue be joined thereon by answer, the board shall proceed to determine the matter, and to that end shall hear such proper evidence as may be adduced before it; and if it appear to the satisfaction of the board that the applicant is guilty as charged, no certificate shall be issued to him. Whenever any holder of a certificate herein provided for is guilty of unprofessional conduct, as the same is defined in his act, and the said unprofessional

conduct has been brought to the attention of the board granting said certificate, in the manner herein provided, or whenever a certificate has been procured by fraud or misrepresentation, or issued by mistake, or the person holding such certificate is found to be practicing contrary to the provisions thereof and of this act, it shall be the duty of said board either to suspend the right of the holder of said certificate to practice for a period not exceeding one year, or in its discretion to revoke his certificate. In the event of such suspension, the holder of such certificate shall not be entitled to practice thereunder during the term of suspension; but, upon the

53 expiration of the term of said suspension, he shall be reinstated by the board and shall be entitled to resume his practice, unless it shall be established to the satisfaction of the board that said person so suspended from practice, has, during the term of such suspension, practiced in the State of California, in which event the board shall revoke the certificate of such person. No such suspension or revocation shall be made unless such holder is cited to appear and the same proceedings are had as is hereinbefore provided in this section in case of refusal to issue certificates. Said secretary in all cases of suspension or revocation shall enter on his register the fact of such suspension or revocation, as the case may be, and shall certify the fact of such suspension or revocation under the seal of the board, to the county clerk of the county in which the certificates of the person whose certificate has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register of the certificate of such person, the following: "The holder of this certificate was on the — day of — suspended for —," or, "This certificate was revoked on the — day of —," as the case may be, giving the day, month and year of such revocation or length of suspension, as the case may be, in accordance with said certification to him by said secretary. The record of such suspension or revocation so made by said county clerk shall be prima facie evidence of the fact thereof, and of the regularity of all the proceedings of said board in the matter of said suspension or revocation. The words "unprofessional conduct" as used in this act are hereby declared to mean:

First. The procuring or aiding, or abetting, or attempting or agreeing or offering to procure a criminal abortion.

Second. The willfully betraying of a professional secret.

54 Third. All advertising of medical business which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, and so be harmful or injurious to public morals or safety.

Fourth. All advertising of any medicine or of any means whereby the monthly periods of women can be regulated or the menses re-established if suppressed.

Fifth. Conviction of any offense involving moral turpitude, in which case the record of such conviction shall be conclusive evidence.

Sixth. Habitual intemperance or excessive use of cocaine, opium, morphine, codeine, heroin, alpha eucaine, vita-eucaine, uervacine or chloral hydrate or any of the salts derivatives or compounds of the

foregoing substances or the prescribing, selling, furnishing, giving away or offering to prescribe, sell, furnish or give away such substances to an habitue who is not under the direct personal and continuous treatment and care of the physician for the cure of the above mentioned drugs.

Seventh. The personation of another licensed practitioner or permitting or allowing another person to use his certificate in the practice of any system or mode of treating the sick or afflicted.

Eighth. The use, by the holder of any certificate, in any sign or advertisement in connection with his said practice, or in any advertisement or announcement of his practice, of any fictitious name, or any other than his own.

Ninth. The use, by the holder of a "drugless practitioner certificate" of drugs or what are known as medicinal preparations in or upon any human being, or the severing or penetrating by the holder of said "drugless practitioner certificate" of the tissues of any human being in the treatment of any disease, injury, deformity, or other physical or mental condition of such human being, excepting the severing of the umbilical cord.

Tenth. Advertising, announcing or stating, directly, indirectly, or in substance, by any sign, card, newspaper advertisement or other written or printed sign or advertisement, that the holder of such certificate or any other person, company, or association by which he is employed or in whose service he is, will cure or attempt to cure or will treat any venereal disease, or will cure or attempt to cure or treat any person or persons for any sexual disease, for lost manhood, sexual weakness, or sexual disorder or any disease of the sexual organs; or being employed by, or being in the service of, any person, firm, association or corporation so advertising, announcing or stating.

Eleventh. The use by the holder of a drugless practitioner certificate of any letter, letters, word, words, or terms or terms used either as prefix or affix or suffix, indicating that such certificate holder is entitled to practice a system or mode of treating the sick or afflicted for which he was not licensed in the State of California.

Twelfth. The employment of "cappers" or "steerers" in procuring practice for a practitioner for a system or mode of treating the sick or afflicted provided for in this act.

Sec. 13. Section seventeen of the said act is hereby amended to read as follows:

Sec. 17. Any person who shall practice or attempt to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or who shall diagnose, treat, operate for, or prescribe for, any disease, injury, deformity, or other mental or physical condition of any person, without having at the time of so doing a valid unrevoked certificate as provided in this act, or who shall in any sign or in any advertisement use the word "doctor", the letters or prefix "Dr." the letters "M. D.," or any other term or letters indicating or implying that he is a doc-

56 tor under the terms of this or any other act, or that he is entitled to practice hereunder, or under any other law, without having at the time of so doing a valid unrevoked certificate as provided in this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than six hundred dollars or by imprisonment for a term of not less than sixty days nor more than one hundred and eighty days or by both such fine and imprisonment. The fine or forfeiture shall be paid, when collected, to the state treasurer, and a report thereof shall be made to the state controller. It shall be the duty of the court to order the proper official of the court to forward such fines or forfeitures direct to the state treasurer to be deposited to the credit of the board of medical examiners' contingent fund without placing such fine or forfeiture in any special or contingent or general fund of any county, city and county, city or township.

Sec. 14. Section eighteen of the said act is hereby amended to read as follows:

Sec. 18. Any person, or any member of any firm or official of any company, association, organization or corporation shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by imprisonment in the county jail for not less than ten days nor more than one year, or by a fine of not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment, who, individually or in his official capacity, shall himself sell or barter, or offer to sell or barter, any certificate authorized to be granted hereunder, or any diploma, affidavit, transcript, certificate or any other evidence required in this act for use in connection with the granting of certificates or diplomas, or who shall purchase or procure the same either directly or indirectly with intent that the same shall be fraudulently used, or who shall with fraudulent intent alter any diploma, certificate, transcript, affidavit or any other evidence to be used in obtaining a diploma or certificate required hereunder, or who shall use or attempt to use fraudulently any certificate, transcript, affidavit, or diploma whether the same be genuine or false, or who shall practice or attempt to practice *sustem* or treatment of the sick or afflicted, under a false or assumed name, or any name other than that prescribed by the board of medical examiners of the State of California on its certificate issued to such person authorizing him to administer such treatment, or who shall assume any degree or title not conferred upon him in the manner and by the authority recognized in this act, with intent to represent falsely that he has received such degree or title, or who shall willfully, make any false statement on any application for examination license or registration under this act, or who shall engage in the treatment of the sick, or afflicted, without causing to be displayed in a conspicuous manner and in a conspicuous place in his office the name of each and every person who is associated with or employed by him in the practice of medicine and surgery or other

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treatment of the sick or afflicted, or who shall, within ten days after demand made by the secretary of the board, fail to furnish said board the name and address of all such persons associated with or employed by him or by any company or association with which he is or has been connected at any time within sixty days prior to said notice, together with a sworn statement showing under and by what license or authority said person or persons, or said employee or employees, is or are, or has or have been practicing medicine or surgery, or any other system of treatment of the sick or afflicted. It shall be the duty of any person or persons upon whom the board of medical examiners may make a demand for the name or names and address or addresses of a person or persons associated or employed by him or them to make affidavit that there are no such person or persons associated or employed by him or them, if such be the fact; provided, that such affidavit shall not be used as evidence against said person or employee in any proceedings under this section."

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VI.

Further complaining your orator avers that the said pretended law is unconstitutional, null and void because the same is repugnant to the Fourteenth Amendment of the Constitution of the United States and repugnant more particularly to that clause of said Amendment which provides that no state shall deprive any person of his life, liberty or property without due process of the law, and particularly to that clause of said Amendment which prohibits any State from denying to any person within its jurisdiction the equal protection of the law.

VII.

That by reason of the said law complainant has been arbitrarily deprived of his right to practice his profession as a drugless practitioner on the same terms and under like circumstances with others engaged in the same profession. That equal protection and security under the said pretended law is denied to the plaintiff inasmuch as said law is highly discriminatory in imposing greater burdens upon plaintiff than are laid upon others in the same calling and position. That the said pretended law discriminates in favor of the Christian Science drugless practitioner in that it expressly declares that the said act shall not be construed to regulate, prohibit or apply to any kind of treatment by prayer, and expressly exempts from the provisions of said act all modes of treating the sick who base his or her healing power on the virtue of prayer.

VIII.

Orator complains and alleges that under said pretended law the Legislature of the State of California has under the guise of a police regulation created a monopoly favored by law in the practice of drugless treatment of disease in relieving that class of drugless practitioners from the equal operation of said law.

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IX.

Orator further complaining alleges that that portion of the pretended law referring to drugless practitioners is obnoxious to and discriminates against every other school of drugless healing and practice in favor of the practitioner by prayer and it therefore is unconstitutional and void.

X.

Orator further alleges that the practice of his profession as a drugless healer is a lawful occupation, innocent in its nature and inoffensive to the individual or community at large and that the Legislature of the State of California did not have the power under the guise of the police regulation to impose harsh, discriminatory, unreasonable and prohibitive conditions upon complainant which unduly and unnecessarily interfere with the liberty of complainant to pursue unmolested and unrestrained the practice of his profession as a drugless practitioner.

XI.

Further complaining your orator avers that the Legislature of the State of California did not have the power under the guise of a police regulation to distinguish between the treatment of the sick by prayer, the treatment of the sick by faith, mental suggestion and mental adoption, the treatment of the sick by the laying on of hands, the treatment of the sick by anointing with Holy oil or other kindred treatments, to approve the one and to condemn the other, to exempt one from the operation and effect of the law and to impose drastic and prohibitive conditions upon the other.

XII.

60 Further complaining, your orator avers that he does not employ prayer in the treatment of disease and is therefore not exempted from the operations of the said law; that he has no certificate of registration from said medical board and is therefore unable under the pains and penalties of a criminal prosecution and severe punishment by fine or imprisonment or both, from pursuing his said occupation as a drugless practitioner for which he is particularly fitted, which skill he has gained by many years of study and practice therein, and that by reason of the many years of his life having been devoted to the study and practice of drugless healing, and by reason of his advancing age, he has in a large measure unfitted himself to take up any new branch of work and that he has no other means to provide a competent support for himself and his large and dependant family.

XIII.

Complainant avers that this suit is authorized by law to be brought by him to redress his deprivation under the color of law and statute of a State, of the right, privileges and immunities secured him by

the Constitution of the United States under Section 266 of the Judicial Code of the United States.

XIV.

Further complaining, orator avers that he has no adequate remedy at law and can only have redress in a Court of equity where such matters are peculiarly cognizable.

XV.

Further complaining, your orator avers that U. S. Webb, Attorney General of the State of California, and the said Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, unless restrained from so doing by an order of this Court, will institute proceedings in the Courts of the State of California to enforce said pretended law, and severely punish all drugless practitioners for the infraction thereof.

61 In consideration whereof, and for as much as the said law is so manifestly, unconstitutional and void in so far that it effects your complainant in the practice of drugless healing and whereas the Supreme Court of the State of California did on the 14th day of October, 1915, hold the said law to be constitutional and not in violation of the guarantees of the Federal Constitution by denying a petition for a Writ of Habeas Corpus, pending before said Supreme Court at that time involving the validity of the said medical law and drugless practice act under the Fourteenth Amendment of the Constitution of the United States, a copy of which said petition is hereto attached and marked Exhibit "A", orator prays

First. "That the aforesaid statute of the State of California enacted as aforesaid and as hereinbefore fully set out in so far as its effects the complainant in the pursuit of his profession as a drugless practitioner be declared to be in violation of and in controvention of the rights of this defendant under the Fourteenth Amendment to the Constitution of the United States.

Second. That the said U. S. Webb, Attorney General of the State of California, and the said Thomas Lee Woolwine District Attorney of the County of Los Angeles, California, and each of their successors, assistants, deputies, agents and employees be temporarily and permanently enjoined from in any way or manner enforcing against your complainant or in attempting to enforce the provisions of the aforesaid unconstitutional and void statute, and from instituting or causing to be instituting any suit, prosecution or proceedings to enforce against said complainant that portion of the aforesaid statute regulating drugless practice.

Third. That a temporary restraining order be granted before the hearing and determination of the application herein, for an
62 interlocutory injunction because of the facts as alleged herein that irreparable loss and damage will result to this complainant and his dependent family unless such temporary restraining order be granted.

Fourth. That complainant have such other and further relief as is just and equitable, as well as a decree for costs.

Fifth. And may it please your Honors to grant unto complainant a Writ of Subpoena of the United States of America issued out of and under the seal of the Honorable Court directed to the said Hiram W. Johnson, Governor of the State of California, U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles therein to be named and under a certain penalty to be and appear before this Honorable Court then and there to answer, but not under oath (the answer under oath being expressly waived) all and singular the premises and to stand to, perform and abide by such order direction and decree as may be made against them in the premises, and the complainant will ever pray, et cetera.

TOM L. JOHNSTON,
Solicitor for Complainant.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, P. L. Crane, upon oath say: I am the complainant in the above entitled Bill, and am familiar with the matters and things mentioned in said Bill, which I have read; I know the contents thereof and the same are true to my own knowledge except as to those matters therein stated to be true on information and belief, and as to those matters I believe them to be true.

P. L. CRANE.

Subscribed and sworn to before me this, the 6th day of March, 1916.

[SEAL]

CHAS. E. STANTON,
*Notary Public in and for the County of
Los Angeles, California.*

My commission expires November 24, 1916.

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EXHIBIT "A."

"In the Supreme Court of the State of California.

In the Matter of CHOW JUYAN and CHOW LET on Habeas Corpus;
ONG FOON, Petitioner.

Petition for Habeas Corpus.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of California:

The Petition of Ong Foon respectfully shows that Chow Juyan and Chow Let are illegally detained, imprisoned, confined and restrained of their liberty by Frederick S. Eggers, Sheriff of the City and County of San Francisco, State of California, and that the said

imprisonment, detention, confinement and restraint are illegal, and that the illegality thereof consists in this, to-wit: that it is claimed by said Frederick S. Eggers, Sheriff, as aforesaid, that the said Chow Juyan and the said Chow Let were regularly and properly charged with the violation of Section 17, of an Act of the Legislature, of the State of California, approved June 2, 1913, (Statutes of California, page 722), entitled:

"An Act to regulate the examination of applicants for license, and the practice of those licenses to treat diseases, injuries, deformities, or other physical or mental conditions of human beings; to establish a Board of Medical Examiners; to provide for their appointment, and to prescribe their powers and duties, and to repeal an Act entitled:

"An Act for the regulation of the practice of medicine, and surgery, osteopathy, and other systems or modes of treating the sick or afflicted in the State of California, and for the
64 appointment of a Board of Medical Examiners in the matter of said regulation. Approved March 14, 1907, and acts amendatory thereof, and also to appeal all other acts and parts of acts in conflict with this Act, approved June 2, 1913, statutes 1913, page 722, in effect August 10, 1913."

That the information filed against the said Chow Juyan and Chow Juyan it was charged that:

"In the Superior Court of the State of California in and for the City and County of San Francisco.

PEOPLE OF THE STATE OF CALIFORNIA

VS.

CHOW LET and CHOW JUYAN.

That on the 26th day of June A. D. 1914, Chow Juyan and Chow Let were accused by the District Attorney of the City and County of San Francisco, State of California, by this information of the crime of Misdemeanor, to-wit: Violating Section 17, of Chapter 354, of the Statutes of 1913, of the State of California, committed as follows:

The said Chow Juyan and the said Chow Let on the 27th day of May, A. D., 1913, at the City and County of San Francisco, State of California, did wilfully and unlawfully and without then and there having a valid, unrevoked medical certificate from the Board of Medical Examiners of the State of California to practice medicine, surgery or other systems or modes of treating the sick or afflicted in the State of California, practice, attempt to practice, advertise and hold himself out as practicing a system or mode of treating the sick and afflicted, and did then and there diagnose, treat, operate for, and prescribe for a certain disease, injury and deformity and other mental and physical condition of a certain person, to-wit: Harriet Flesig, contrary to the form, force and effect of the

statute in such case, made and provided and against the
 65 peace and dignity of the People of the State of California.

C. M. FICKERT,

*District Attorney in and for the City and
 County of San Francisco, State of California.*

Witnesses:

HARRIET FLESIG.

GEORGIA V. BOWES.

That upon the trial of said Chow Juyan and Chow Let evidence was presented for the purpose of showing that the said Chow Juyan and the said Chow Let were confronted by one Harriet Flesig, and one said Georgia V. Bowes, both officers of the Board of Medical Examiners, who testified that the said Chow Juyan and the said Chow Let had sold them certain alleged Chinese herbs, and it further appearing from the said testimony of the said Harriet Flesig and the said Georgia V. Bowes, that the method of diagnosis used by the said Chow Juyan and the said Chow Let, was that of the Chinese system of the healing art, to-wit: feeling the pulse, and upon said testimony said Chow Juyan and said Chow Let were convicted of the alleged offense, in aforesaid information, a copy of which is hereto annexed, and marked Exhibit "B" and made a part hereof.

That pursuant to said conviction the Honorable Superior Court, Department Number 11 thereof, pronounced judgment, ordering, adjudging and sentencing the said Chow Juyan and the said Chow Let to imprisonment in the County Jail, and in addition thereto fined them in the sum of \$600.00. Thereupon the said Chow Juyan and the said Chow Let appealed to the District Court of Appeals, First Appellate District of the State of California. That the said District Court of Appeal upon the 22nd day of July, 1915, affirmed said judgment and conviction.

66 Your petitioner alleges that said imprisonment is illegal in that the information under which Chow Juyan and said Chow Let were imprisoned did not comply with the requirements of Section 1426 of the Penal Code of the State of California.

Your petitioner further alleges that the Act under which said Chow Juyan and said Chow Let were convicted is unconstitutional and void, in that it makes no provision for testing the proficiency of the said Chow Juyan and the said Chow Let according to the theory, art or science of Chinese Herbal Therapy, as provided by the said Chow Juyan and the said Chow Let.

Said Act is further unconstitutional and void in that it violates Article I, Section I, of the constitution of the State of California, in that said Section provides that for "the peaceable acquiring, possession and protection of property, and pursuing and obtaining safety and happiness."

Said Act is further void in that it violates Article I, of the Constitution of the State of California, section 11, thereof, in that said Section provides: "all laws of a general nature shall have a uniform operation."

Said Act is further void in that it violates Article I, of the Constitution of the State of California, and Section 13 thereof, in that

said Section provides: that no person shall "be deprived of life, liberty or property without due process of law."

Said Act is further void in that it violates Article 6, of the United States Constitution, in that said Article provides: "All treaties made or which shall be made under the authority of the United States shall be the supreme law of the land, and the judges of every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

67 Said Act is further void in that it violates Article 5, of the Amendments to the constitution of the United States, in that the said amendment provides; that no person shall "be deprived of life, liberty or property without due process of law."

Said Act is further void in that it violates Article 6, of the Amendments to the United States constitution, in that said article provides: that all *personal* shall "be informed of the nature and cause of the accusation."

Said Act is further unconstitutional and void in that it violates Article 14, of the Amendments to the United States constitution, in that said amendment provides: "nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Said Act is further unconstitutional and void in that it violates Article 2 of the Treaty now existing between the Republic of the United States and the Republic of China, in that the said Treaty provides that all chinese within the borders of the United States "shall be accorded all the rights, privileges, immunities and exemptions, which are accorded to the citizens and subjects of most favored nations."

Said Act is further unconstitutional and void in that it violates Article 3 of said Treaty existing between the United States and the Republic of China, in that said article provides: "The Government of the United States will exert all of its power to devise measures for their protection and to secure to them the same rights, privileges, immunities and exemptions as may be enjoyed by the citizens or subjects of most favored nations, and to which they are entitled by Treaty."

Wherefore, Your petitioner prays that a Writ of Habeas Corpus may be issued and delivered to the said Fred S. Eggers, Sheriff, as aforesaid, commanding and directing him to have the body of Chow Juyan and the body of said Chow Let before this Honorable court at the time and place to be designated in said order, together with the time and cause of this detention.

Your petitioner further prays that said Chow Juyan and said Chow Let may be admitted to bail in the sum of — bending the final determination of this cause.

ONG FOON, *Petitioner*,
MICHELSON & MICHELSON,
Attorneys for Petitioner.

Dated this 11th day of October, 1915, San Francisco, California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Ong Foon being duly sworn deposes and says: that he is the petitioner named in the foregoing Petition; that the same has been read and explained to him, and he knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

ONG FOON.

Subscribed and sworn to before me this 11th day of October, 1915.

EDITH W. BURNHAM,
*Notary Public in and for the City and
 County of San Francisco, State of California.*

(Endorsed:) No. C18. Eq. United States District Court, Southern District of California, Southern Division. P. L. Crane, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Bill of Complaint. Filed Mar. 6, 1916. Wm. M. Van Dyke, Clerk, by Chas. N. Williams, Deputy Clerk.

69 In the District Court of the United States in and for the
 Southern District of California, Southern Division.

P. L. CRANE, Plaintiff,

VS.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendants.

Affidavit.

STATE OF CALIFORNIA,
County of Sacramento, ss:

T. B. Hagerty, being first duly sworn, deposes and says: that he is a resident of the City of Sacramento, County of Sacramento, State of California; that he is over the age of 21 years, and is not interested in the subject matter of the above entitled action, or connected with any of the parties thereto; that on the 8th day of March, 1916, he served upon the Honorable Hiram W. Johnson, Governor of the State of California, in the City of Sacramento, a notice, a copy of which notice is hereto attached and made a part of this affidavit; and that at the time of the said service of said notice, he also served upon the Honorable Hiram W. Johnson, Governor of the State of California, in the City of Sacramento, a copy of the Bill of Complaint herein.

70

T. B. HAGERTY.

Subscribed and sworn to before me this 8th day of March, 1916.

[SEAL.]

ALBERT D. SMITH,

*Notary Public in and for the County of
Sacramento, State of California.*

My commission expires Mch. 23, 1918.

71 In the District Court of the United States in and for the
Southern District of California, Southern Division.

In Equity.

P. L. CRANE, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S.
Webb, Attorney General of the State of California, and Thomas
Lee Woolwine, District Attorney of the County of Los Angeles,
California, defendant.

Notice.

To Hiram W. Johnson, Governor of the State of California; U. S.
Webb, Attorney General of the State of California; Thomas Lee
Woolwine, District Attorney of the County of Los Angeles, State
of California:

You and each of you will take notice that the plaintiff herein by
his attorney, will make application to the Honorable Judges of the
District Court of the United States, in and for the Southern District
of California, Southern Division, sitting at Los Angeles, California,
on the 28th day of March, 1916, at the Federal Court House, in
the City of Los Angeles, in the State of California, at ten
72 o'clock A. M., on said day, for an interlocutory injunction
herein restraining the defendants above named and each of
them, from in any manner enforcing or attempting to enforce the
provisions of a certain Act passed by the Legislature of the State of
California, at its Fortieth Session, which began on Monday, January
6th, 1913, and which adjourned on Tuesday, May 12, 1913, and
which said Act was approved by the Governor on June 2, 1913, and
went into effect August 10th, 1913, designated as Chapter 354 of the
Statutes and Amendments to the Codes of California, and entitled,
"An Act to regulate the examination of applicants for license, and
the practice of those licensed, to treat diseases, injuries, deformities
or other physical or mental condition of human beings; to establish
a board of medical examiners to provide for their appointment and
prescribe their powers and duties, and to repeal an Act entitled "An
Act for the regulation of the practice of medicine and surgery,
osteopathy, and other systems and modes of treating the sick or
afflicted, in the State of California, and for the appointment
of a board of medical examiners in the matter of said regulation,
approved March 14, 1907, and acts amendatory thereof, and also

to repeal all other Acts and parts of Acts in conflict with this Act, also that certain Act passed by the Legislature of the State of California at its Forty-first Session which began on Monday, January 4th, 1915, and adjourned on Sunday, May 9th, 1915, which was approved by the Governor on April 24th, 1915, and went into effect

August 8th, 1915, designated as Chapter 105 of the Statutes and Amendments to the Codes of California, and entitled:

73 "An Act to amend an Act entitled, "An Act to regulate the examination of applicants for license, and the practice of those licensed to treat diseases, injuries, deformities or other physical or mental condition of human beings; to establish a board of medical examiners, to provide for their appointment and prescribe their powers and duties and to repeal an Act entitled, 'An Act for the regulation of the practice of medicine and surgery, osteopathy, and other systems or modes of treating the sick or afflicted, in the State of California, and for the appointment of a board of medical examiners in the matter of said regulation, approved March 14, 1907, and Acts amendatory thereof, and also to repeal all other Acts and parts of Acts in conflict with this Act, approved June 2, 1913, by amending Sections 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 17, and 18, and adding a new section thereto to be numbered twelve and one-half relating to the practice of chiropody in so far as the said Acts effect the right of complainant to pursue his profession as a drugless practitioner, according to the Bill of Complaint filed herein, a copy of which is herewith served upon you.

And that at the same time and place and pending the hearing and determination of said application for an interlocutory injunction, the plaintiff will ask that a temporary restraining order issue herein under the provisions of Section 266 of the Judicial Code of the United States.

Dated at Los Angeles, California, this, the 6th day of March, 1916.

TOM L. JOHNSTON,
Solicitor for Plaintiff.

74 (Endorsed:) No. C. 18. Eq. United States District Court, Southern District of California, Southern Division. P. L. Crane, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Affidavit of Service of Notice and Copy of Bill of Complaint. Filed Mar. 16, 1916. Wm. M. Van Dyke, Clerk, by R. S. Zimmerman, Deputy Clerk.

75 In the District Court of the United States in and for the Southern District of California, Southern Division.

P. L. CRANE, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendants.

Affidavit.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

Vincent S. Brown being first duly sworn, deposes and says: That he is a resident of the City and County of San Francisco, State of California; that he is over the age of 21 years, and is not interested in the subject matter of the above entitled action, or connected with any of the parties thereto; that on the 9th day of March, 1916, he served upon the Honorable U. S. Webb, Attorney General of the State of California, in the City and County of San Francisco, a notice, a copy of which is hereto attached and made a part of this affidavit; and that at the time of the said service of said notice, he also served upon the Honorable U. S. Webb, Attorney General of the State of California, in the City and County of San Francisco, a copy of the Bill of Complaint herein.

76

VINCENT S. BROWN.

Subscribed and sworn to before me this 9th day of March, 1916.

[SEAL.]

EDITH W. BURNHAM,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires January 30, 1918.

77 In the District Court of the United States in and for the Southern District of California, Southern Division.

In Equity.

P. L. CRANE, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendant.

Notice.

To Hiram W. Johnson, Governor of the State of California; U. S. Webb, Attorney General of the State of California; Thomas Lee Woolwine, District Attorney of the County of Los Angeles, State of California:

You and each of you will take notice that the plaintiff herein by his attorney, will make application to the Honorable Judges of the District Court of the United States, in and for the Southern District of California, Southern Division, sitting at Los Angeles, California, on the 28th day of March, 1916, at the Federal Court House, in the City of Los Angeles, in the State of California, at ten
78 o'clock A. M., on said day, for an interlocutory injunction herein restraining the defendants above named and each of them, from in any manner enforcing or attempting to enforce the provisions of a certain Act passed by the Legislature of the State California, at its Fortieth Session, which began on Monday, January 6th, 1913, and which adjourned on Tuesday, May 12, 1913, and which said Act was approved by the Governor on June 2, 1913, and went into effect August 10th, 1913, designated as Chapter 354 of the Statutes and Amendments to the Codes of California, and entitled, "An Act to regulate the examination of applicants for license, and the practice of those licensed, to treat diseases, injuries, deformities or other physical or mental condition of human beings; to establish a board of medical examiners to provide for their appointment and prescribe their powers and duties, and to repeal an Act entitled "An Act for the regulation of the practice of medicine and surgery, osteopathy, and other systems and modes of treating the sick or afflicted, in the State of California, and for the appointment of a board of medical examiners in the matter of said regulation, approved March 14, 1907, and acts amendatory thereof, and also to repeal all other Acts and parts of Acts in conflict with this Act, also that certain Act passed by the Legislature of the State of California at its Forty-first Session which began on Monday, January 4th, 1915, and adjourned on Sunday, May 9th, 1915, which was approved by the Governor on April 24, 1915, and went into effect August 8th, 1915, designated as Chapter 105 of the Statutes and

79 Amendments to the Codes of California, and entitled: "An Act to amend an Act entitled, "An Act to regulate the examination of applicants for license, and the practice of those licensed to treat diseases, injuries, deformities or other physical or mental condition of human beings; to establish a board of medical examiners, to provide for their appointment and prescribe their powers and duties and to repeal an Act entitled, 'An Act for the regulation of the practice of medicine and surgery, osteopathy, and other systems or modes of treating the sick or afflicted, in the State of California, and for the appointment of a board of medical examiners in the matter of said regulation, approved March 14, 1907, and Acts amendatory thereof, and also to repeal all other Acts and parts of Acts in conflict with this Act, approved June 2, 1913, by amending Sections 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 17, and 18, and adding a new section thereto to be numbered twelve and one-half relating to the practice of chiropody in so far as the said Acts effect the right of complainant to pursue his profession as a drugless practitioner, according to the Bill of Complaint filed herein, a copy of which is herewith served upon you.

And that at the same time and place and pending the hearing and determination of said application for an interlocutory injunction, the plaintiff will ask that a temporary restraining order issue herein under the provisions of Section 266 of the Judicial Code of the United States.

Dated at Los Angeles, California, this, the 6th day of March, 1916.

TOM L. JOHNSTON,
Solicitor for Plaintiff.

80 (Endorsed:) No. C. 18. Eq. United States District Court, Southern District of California, Southern Division. P. L. Crane, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Affidavit of Service of Notice and Copy of Bill of Complaint. Filed Mar. 16, 1916. Wm. M. Van Dyke, Clerk, by R. S. Zimmerman, Deputy Clerk.

81 In the District Court of the United States in and for the Southern District of California, Southern Division.

P. L. CRANE, Plaintiff,
vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Affidavit.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

A. S. Adams being first duly sworn, deposes and says: that he is a resident of the City of Los Angeles, County of Los Angeles, State of

California; that he is over the age of 21 years, and is not interested in the subject matter of the above entitled action, or connected with any of the parties thereto; that on the 13th day of March, 1916, he served upon the Honorable Thomas Lee Woolwine, District Attorney of the County of Los Angeles, State of California, in the City of Los Angeles, a notice, a copy of which notice is hereto attached and made
 82 a part of this affidavit, and that at the time of the said service of said notice, he also served upon the Honorable Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, in Los Angeles, a copy of the Bill of Complaint herein.

A. S. ADAMS.

Subscribed and sworn to before me this 15 day of March, 1916.

[SEAL.]

FREDERICK W. SMITH,
*Notary Public in and for the County of
 Los Angeles, State of California.*

My commission expires December 7, 1918.

83 In the District Court of the United States in and for the Southern District of California, Southern Division.

In Equity.

P. L. CRANE, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendant.

Notice.

To Hiram W. Johnson, Governor of the State of California; U. S. Webb, Attorney General of the State of California; Thomas Lee Woolwine, District Attorney of the County of Los Angeles, State of California:

You and each of you will take notice that the plaintiff herein by his attorney, will make application to the Honorable Judges of the District Court of the United States, in and for the Southern District of California, Southern Division, sitting at Los Angeles, California, on the 28th day of March, 1916, at the Federal Court House,
 84 in the City of Los Angeles, in the State of California, at ten o'clock A. M., on said day, for an interlocutory injunction herein restraining the defendants above named and each of them, from in any manner enforcing or attempting to enforce the provisions of a certain Act passed by the Legislature of the State of California, at its Fortieth Session, which began on Monday, January 6th 1913, and which adjourned on Tuesday, May 12, 1913, and which

said Act was approved by the Governor on June 2, 1913, and went into effect August 10th, 1913, designated as Chapter 354 of the Statutes and Amendments to the Codes of California, and entitled, "An Act to regulate the examination of applicants for license, and the practice of those licensed, to treat diseases, injuries, deformities or other physical or mental condition of human beings; to establish a board of medical examiners to provide for their appointment and prescribe their powers and duties, and to repeal an Act entitled "An Act for the regulation of the practice of medicine and surgery, osteopathy, and other systems and modes of treating the sick or afflicted, in the State of California, and for the appointment of a board of medical examiners in the matter of said regulation, approved March 14, 1907, and acts amendatory thereof, and also to repeal all other Acts and parts of Acts in conflict with this Act, also that certain Act passed by the Legislature of the State of California at its Forty-first Session which began on Monday, January 4th, 1915, and adjourned on Sunday, May 9th, 1915, which was approved by the Governor on April 24, 1915, and went into effect August 8th, 1915, designated as Chapter 105 of the Statutes

85 and Amendments to the Codes of California, and entitled:

"An Act to amend an Act entitled, "An Act to regulate the examination of applicants for license, and the practice of those licensed to treat diseases, injuries, deformities or other physical or mental condition of human beings; to establish a board of medical examiners, to provide for their appointment and prescribe their powers and duties and to repeal an Act entitled, 'An Act for the regulation of the practice of medicine and surgery, osteopathy, and other systems or modes of treating the sick or afflicted, in the State of California, and for the appointment of a board of medical examiners in the matter of said regulation, approved March 14, 1907, and Acts amendatory thereof, and also to repeal all other Acts and parts of Acts in conflict with this Act, approved June 2, 1913, by amending Sections 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 17, and 18, and adding a new section thereto to be numbered twelve and one-half relating to the practice of chiropody in so far as the said Acts effect the right of complainant to pursue his profession as a drugless practitioner, according to the Bill of Complaint filed herein, a copy of which is herewith served upon you.

And that at the same time and place and pending the hearing and determination of said application for an interlocutory injunction, the plaintiff will ask that a temporary restraining order issue herein under the provisions of Section 266 of the Judicial Code of the United States.

Dated at Los Angeles, California, this, the 6th day of March, 1916.

TOM L. JOHNSTON,
Solicitor for Plaintiff.

86 (Endorsed:) No. C. 18. Eq. United States District Court, Southern District of California, Southern Division. P. L. Crane, Plaintiff, vs. Hiram W. Johnson et al., Defendants. Affi-

davit of Service of Notice and Copy of Bill of Complaint. Filed Mar. 16, 1916. Wm. M. Van Dyke, Clerk, by R. S. Zimmerman, Deputy Clerk.

87 At a stated term, to-wit, the January Term, A. D., 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room thereof, in the City of Los Angeles, on Saturday, the Eighth Day of April, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

Present: The Honorable Erskine M. Ross, Circuit Judge; The Honorable Oscar A. Trippet, District Judge, and the Honorable Edward E. Cushman, District Judge.

No. C-18. Equity.

P. L. CRANE, Complainant,

VS.

HIRAM W. JOHNSON, Governor of the State of California et al.,
Defendants.

Tom L. Johnston, Esq., appearing as counsel for complainant; Robert M. Clarke, Esq., Assistant to the Attorney General of the State of California, and George E. Cryer, Esq., Assistant District Attorney of the County of Los Angeles, California, appearing as counsel for defendants; this cause having heretofore been submitted to the court for its consideration and decision on a question as to the jurisdiction of this court herein; the court, having duly considered the same and being fully advised in the premises, now hand down their memorandum opinion thereon, and it is ordered that the challenge of the jurisdiction of this court in this suit be, and the same hereby is denied; and this cause thereupon coming on to be heard on complainant's motion for an interlocutory injunction; and said motion having been argued, in support thereof, by Tom L. Johnston, Esq., of counsel for complainant; it is thereupon by the court ordered that complainant's motion for an interlocutory injunction be, and the same hereby is denied.

88 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-18. In Equity.

P. L. CRANE, Plaintiff,

VS.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendants.

C-19. In Equity.

KATE P. McNAUGHTON, Plaintiff,

VS.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendants.

Before Ross, Circuit Judge, and Trippet and Cushman, District Judges.

89 Upon the authority of the cases of William Truax, Sr., and others, against Mike Raich, (Advance Sheets Supreme Court, Nov. 1, 1915), and Raich v. Truax, 219 Fed. 273, 283, we think the jurisdiction of the District Court over the present suits is clear. We have, therefore, only to determine whether upon the bill the complainant is entitled to an interlocutory injunction.

The rule is well settled that the granting of such orders is within the sound discretion of the court, and in the exercise of such discretion, based upon the averments of the bills, we are of the opinion that the application should be denied. We do not understand that upon such an application as the present the court, composed, under statutory requirement, of the Judge of the District Court, of another District Judge and a Circuit Judge, is called upon, if, indeed, authorized, to decide the merits of the suits.

(Endorsed:) No. C-18-C-19-Eq. U. S. District Court, Southern District of California, Southern Division. P. L. Crane vs. Hiram Johnson et al. Kate P. McNaughton vs. Hiram Johnson et al. Memo. of Opinion of Court. Filed Apr. 8, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

90 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-18. Equity.

P. L. CRANE, Plaintiff,

VS.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Petition for Appeal.

To the Honorable Oscar A. Tripet, Judge of the United States District Court in and for the Southern District of California, Southern Division:

The above named plaintiff, feeling aggrieved by the order rendered and entered in the above entitled cause on the 8th day of April, 1916, refusing plaintiff's application for an interlocutory injunction, appeals therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. Plaintiff prays that this appeal be allowed and that citation be issued as provided by law, and that the transcript of the record proceedings, and documents upon which said order was based,
91 duly authenticated be sent to the Supreme Court of the United States, sitting at Washington, in the District of Columbia, under the rules of that Court in such cases made and provided.

TOM L. JOHNSTON,
Attorney for Complainant.

(Endorsed:) No. C-18-Equity. United States District Court, Southern District of California, Southern Division. P. L. Crane, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Petition for Appeal. Received copy of within Petition this 10 day of April, 1916. U. S. Webb, Rob't M. Clarke, Thomas Lee Woolwine, Geo. E. Cryer, Tom L. Johnston, Esq., Attorney for Plaintiff. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

92 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-18. Equity.

P. L. CRANE, Plaintiff,

VS.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of the County of Los Angeles, California, Defendants.

Assignment of Errors.

Now comes P. L. Crane, by his attorney, Tom L. Johnson, complainant herein, and makes and files the following assignment of errors upon his appeal to the Supreme Court of the United States from an order of the District Court in and for the Southern District of California, Southern Division, denying plaintiff's application for an interlocutory injunction.

The District Court erred in denying the order for the interlocutory injunction in this case for the following reasons, to-wit:

I.

That plaintiff's Bill of Complaint filed in the above entitled cause showed sufficient grounds for the granting of an interlocutory injunction.

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II.

That it appears from the face of plaintiff's Bill of Complaint that the plaintiff is entitled to an interlocutory injunction to restrain the enforcement of the Statute of the State of California, which denies to the plaintiff the equal protection of the law, and which is in controvention of his rights guaranteed him under the Fourteenth Amendment of the Constitution of the United States.

Wherefore, plaintiff prays that said order be reversed and the District Court in and for the Southern District of California, Southern Division, be ordered to enter an order granting plaintiff's application for an interlocutory injunction.

TOM L. JOHNSTON,

Solicitor for Complainant.

(Endorsed:) No. C-18-Equity. United States District Court, Southern District of California, Southern Division. P. L. Crane, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Assignment of Errors. Received copy of within Assignment this 10 day of April, 1916. U. S. Webb, Rob't M. Clarke, Thomas Lee Woolwine, Geo. E. Cryer, Tom L. Johnston, Esq., Attorney for Plaintiff. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

- 94 In the District Court of the United States in and for the Southern District of California, Southern Division.

No. C-18. Equity.

P. L. CRANE, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Order Allowing Appeal and Fixing Bond.

The above named complainant having petitioned this Court for an appeal from the order and decree made in this cause on the 8th day of April, 1916 denying the application of plaintiff for an interlocutory injunction, the Court hereby grants the said appeal from said judgment and it is hereby ordered that the said appeal be granted upon the giving of a good and sufficient bond in the sum of Three hundred Dollars, to be approved by this Court for the payment of costs.

Done in open Court, this 12th day of April, 1916.

OSCAR A. TRIPPET,

Judge of the District Court of the United States in and for the Southern District of California, Southern Division.

- 95 (Endorsed:) No. C-18. Equity. United States District Court, Southern District of California, Southern Division. P. L. Crane, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Order Allowing Appeal and Fixing Bond. Received copy of within this 11th day of April, 1916. U. S. Webb, Attorney General; Robert M. Clarke, Deputy, Attorneys for Defendants. Thomas Lee Woolwine, Geo. E. Cryer. Tom L. Johnston, Esq., Attorney for Plaintiff. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

96 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-18. Equity.

P. L. CRANE, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California; Thomas Lee Woolwine, District Attorney of the County of Los Angeles, State of California, Defendants.

Bond on Appeal.

Know all men by these presents, That we, P. L. Crane, the Complainant and Rollo E. Goodrich of Los Angeles, State of California, and Samuel W. Thomas of Los Angeles, State of California, as sureties, are held and firmly bound unto the above named Hiram W. Johnson, Governor of the State of California, U. S. Webb, Attorney General of the State of California and Thomas Lee Woolwine, District Attorney in and for the County of Los Angeles, State of California, in the penal sum of three hundred dollars, (\$300.00) to be paid to the said parties, for the payment of which well and truly to be made, we bind ourselves, or each of us, our and each of our heirs, executors, administrators and successors jointly and severally, firmly by these presents.

97 Sealed with our seals and dated this 11th day of April, in the year of our Lord one thousand nine hundred and sixteen.

Whereas, the above named P. L. Crane has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the District Court of the United States for the Southern District of California, Southern Division.

Now, Therefore, the conditions of this obligation is such that if the above named P. L. Crane shall prosecute said appeal to effect and answer all damages and costs, if he shall fail to make said appeal good, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

P. L. CRANE.
ROLLO E. GOODRICH.
SAMUEL W. THOMAS.

Sealed and delivered, and taken and acknowledged, this, the 11th day of April, 1916, before me, Arthur L. Falloon, a Notary Public in and for the County of Los Angeles, State of California.

[SEAL.]

ARTHUR L. FALLOON,
Notary Public in and for the County of
Los Angeles, State of California.

The foregoing bond is approved this 12 day of April, 1916.

OSCAR A. TRIPPET,
District Judge.

98 (Endorsed:) No. C-18 Equity. United States District Court, Southern District of California, Southern Division. P. L. Crane, Plaintiff, vs. Hiram W. Johnson, et al., Defendant. Bond on Appeal. Received copy of within this 11th day of April, 1916. U. S. Webb, Attorney General; Robert M. Clarke, Deputy, Attorneys for Defendants. Thomas Lee Woolwine, Geo. E. Cryer. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

99 In the District Court of the United States in and for the Southern District of California, Southern Division.

C-18. Equity.

P. L. CRANE, Plaintiff,
vs.

Hiram W. Johnson, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Order for Clerk to Certify Papers, Documents, et cetera, to the Supreme Court of the United States.

Plaintiff having made application for an appeal to the Supreme Court of the United States from the order of this Court denying plaintiff's application for an interlocutory injunction and said appeal having been duly allowed by order of this Court, now on motion of Tom L. Johnston, Attorney for the Complainant herein,

It is ordered, that the Clerk prepare and certify a transcript of the record in this case upon plaintiff's said appeal, and forward the same to the Clerk of the Supreme Court of the United States.

Dated this, the 10th day of April, 1916.

OSCAR A. TRIPPET,
Judge of the District Court.

100 (Endorsed:) No. C-18-Equity. United States District Court, Southern District of California, Southern Division. P. L. Crane, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Order for Clerk to Certify Papers, Documents, et cetera, to the Supreme Court of the United States. Received copy of within Order this 10th day of April, 1916. U. S. Webb, Robt. M. Clarke, Thomas Lee Woolwine, Geo. E. Cryer. Tom L. Johnston, Esq., Attorney for Plaintiff. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

101 In the District Court of the United States, in and for the Southern District of California, Southern Division.

C-18. Equity.

P. L. CRANE, Plaintiff,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

Præcipe for Transcript of Record on Appeal.

To William Van Dyke, Esquire, Clerk of the United States District Court in and for the Southern District of California, Southern Division:

You will please in accordance with the order and citation in the above entitled cause, prepare a transcript of the record, in this cause to be filed in the office of the Clerk of the Supreme Court of the United States, and include in said transcript on appeal the following pleadings, proceedings and papers on file, to-wit:

Bill of Complaint;

Opinion of Court on denying application for interlocutory injunction.

Petition for Appeal.

Order Allowing Appeal.

102 Assignment of Errors.

Citation on Appeal and Clerk's Certificate;

Notice of Application for Temporary Restraining Order; and Interlocutory Injunction;

Order Denying Interlocutory Injunction;

Præcipe for transcript of record on Appeal.

Order to Certify Transcript of Record;

Affidavit of Service of Assignment of Errors and Citation on Appeal.

Dated this, the 10th day of April, 1916.

TOM L. JOHNSTON,

Solicitor for Complainant.

(Endorsed:) No. c-18. In Equity. United States District Court, Southern District of California, Southern Division. P. L. Crane, Plaintiff, vs. Hiram W. Johnson, et al., Defendants. Præcipe for Transcript of Record on Appeal. Received copy of within Præcipe for Transcript this 10th day of April, 1916. U. S. Webb, Atty. General, Robt. M. Clarke, Deputy. Thomas Lee Woolwine, Geo. E. Cryer. Tom L. Johnston, Esq., Attorney for Plaintiff. Filed Apr. 12, 1916. Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy Clerk.

103 In the District Court of the United States in and for the Southern District of California, Southern Division.

No. C-18. Equity.

P. L. CRANE, Complainant,

vs.

HIRAM W. JOHNSON, Governor of the State of California; U. S. Webb, Attorney General of the State of California, and Thomas Lee Woolwine, District Attorney of Los Angeles County, California, Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing one hundred and two (102) typewritten pages, numbered from 1 to 102, inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Bill of Complaint, Notices of Application for Interlocutory Injunction, with Affidavits showing service on each of the defendants, Minute Order Denying Application for Interlocutory Injunction, Memorandum Opinion of Court Denying Application for Interlocutory Injunction, Petition for Order Allowing Appeal, Assignment of Errors, Order Allowing Appeal and Fixing Bond, Bond on Appeal, Order for Clerk to Certify Papers, Documents, etc., to the Supreme Court of the United States, and Præcipe for Transcript of Record on Appeal, in the above and therein-entitled action, and that the same together constitute the record on appeal, as specified in the said Præcipe for Transcript of Record on Appeal, filed in my office on behalf of the appellant by his attorney of record.

104 I do further certify that the cost of the foregoing transcript is \$55.10, the amount whereof has been paid me by P. L. Crane, the Appellant herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Southern Division, this 25th day of April, in the year of our Lord one thousand nine hundred and sixteen, and of our Independence the one hundred and fortieth.

[Seal of the U. S. District Court, Southern District of California.]

WM. M. VAN DYKE,

*Clerk of the District Court of the United States of America
in and for the Southern District of California,*
By LESLIE S. COLYER,

Deputy Clerk.

United States internal revenue documentary stamp, series of 1914, 10 cents, canceled 4, 25, 16. L. S. C.

Endorsed on cover: File No. 25,314. S. California D. C. U. S. Term No. 1031. P. L. Crane, appellant, vs. Hiram W. Johnson, Governor of the State of California, et al. Filed May 26th, 1916. File No. 25,314.





In the Supreme Court

OF THE

United States.

P. L. Crane,

Appellant,

vs.

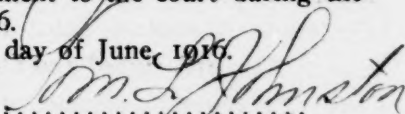
Hiram W. Johnson, Governor of
the State of California, U. S.
Webb, Attorney General of the
State of California, and Thomas
Lee Woolwine, District Attorney
of the County of Los Angeles,
State of California,

Appellees.

Stipulation and Agreement to Advance.

It is hereby stipulated and agreed by counsel
for the respective parties hereto that notice of
motion to advance the above-entitled cause is
hereby waived and that the court may advance
the above-entitled cause for hearing at the
earliest day convenient to the court during the
October term, 1916.

Dated this 20th day of June, 1916.



Attorney for Appellant.

U. S. WEBB
ROBERT M. CLARK
THOMAS LEE WOOLWINE
GEORGE E. CRYER
CHIEF DEPUTY

Attorneys for Appellees.

In the Supreme Court OF THE United States.

P. L. Crane,

Appellant,

vs.

**Hiram W. Johnson, Governor of
the State of California, U. S.
Webb, Attorney General of the
State of California, and Thomas
Lee Woolwine, District Attorney
of the County of Los Angeles,
State of California,**

Appellees.

Motion by Appellant to Advance.

Comes now the appellant in the above-entitled cause, the appellees consenting, as evidenced by stipulation of counsel dated the 20th day of June, A. D. 1916, signed and filed herewith, and moves the court to advance the above-entitled cause for hearing to an early day convenient to the court during the October term, 1916, the reasons prompting this motion are as follows:

The above-entitled cause involves the constitutionality of an act of the legislature of the state of California, known as the Medical Prac-

tice Act, and this suit was brought by the appellant herein under section 266 of the Judicial Code of the United States, which provides that cases brought under this section shall take precedence over all other business, and the hearing of same shall be in every way expedited.

Wherefore, it is prayed that this application to advance the above-entitled cause for hearing at an early date convenient to the court during the October term, 1916, be allowed.

Respectfully submitted,

Tom L. Johnston
.....
Counsel for Appellant.



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IN THE
SUPREME COURT
OF THE
UNITED STATES.

P. L. Crane,

Appellant,

vs.

Hiram W. Johnson, Governor of
the State of California, U. S.
Webb, Attorney General of the
State of California, and Thomas
Lee Woolwine, District At-
torney of the County of Los
Angeles, California,

Appellees.

APPELLANT'S BRIEF.

This is an appeal from an order denying an application for an interlocutory injunction seeking to restrain the attorney general of the state of California and the district attorney of the county of Los Angeles, California, from enforcing the provisions of a law enacted by the legislature of the state of California, and known as the Medical Law of the state of California, and fully set forth in the original bill of complaint herein. Said application was made under the provisions of section 266 of the Judicial Code of the United States and heard before Erskine M. Ross, circuit judge of the United States, and O. A. Trippet and E. E. Cushman, district judges of the United States.

The acts of the legislature of the state of California as complained of by the plaintiff as

being in contravention of his rights under the Fourteenth Amendment of the Constitution of the United States is fully set forth in plaintiff's complaint filed herein, and is known as the Medical Law of the state of California, regulating the examination of applicants for licenses and the practice of those licensed to treat diseases, injuries, deformities or other physical or mental conditions of human beings.

Section 17 of said law, found on page 48 of plaintiff's bill of complaint, makes it a penal offense punishable by a fine of not less than \$100 nor more than \$600, or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both such fine and imprisonment, for any person to practice or attempt to practice, or to advertise or hold himself out as practicing any system or mode of treating the sick or afflicted in the state of California.

Section 22 of the Act of 1913, found on page 24 of plaintiff's bill of complaint, expressly provides that the said act shall not regulate, prohibit or apply to any kind of treatment by prayer.

Within the limitations of the federal Constitution the state may, in the exercise of its police power, make such reasonable regulations as are conducive to the health, morals, safety, convenience and general welfare of the people, but to constitute a valid police regulation a law must be reasonable, giving equal protection and security to all under like circumstances in the enjoyment of their personal and civil rights.

It is our contention that the legislature of the state of California has, under the guise of a

police regulation, created a monopoly favored by law in the practice of drugless treatment of diseases in relieving that class of drugless practitioners from the equal operation of the law who employ prayer in the treatment of diseases.

We further contend that that portion of the law referring to drugless practitioners is obnoxious to and discriminates against every other school of drugless healing and practice in favor of the practitioner by prayer, and is therefore unconstitutional and void.

We further contend that the legislature of the state of California did not have the power under the guise of a police regulation to discriminate between the treatment of the sick by prayer, the treatment of the sick by faith, mental suggestion and mental adaptation, the treatment of the sick by the laying on of hands, the treatment of the sick by anointing with oil, or kindred treatments, to approve of the one and condemn the other, to exempt one from the operation and effect of the law and impose drastic and prohibitive conditions and regulations upon the other.

In holding the law complained of as unconstitutional, Judge W. P. James, of the District Court of Appeal of the state of California, Second Appellate District, delivered the following opinion: "The act in terms first proposes to include within

its regulatory and penal provisions the practice of treating the sick and infirm, of whatever kind may be the infirmity or ailment, and of whatever sort the remedy. It is made a misdemeanor for a person to practice, or attempt to practice, or hold himself out as practicing any system or mode of treating the sick or afflicted, or to diagnose, treat, operate, or prescribe for any disease, injury, deformity, or other mental or physical condition, without having obtained the certificate issued by the board of medical examiners. Then by express declaration it is provided that the act shall not be construed to "regulate, prohibit or to apply to any kind of treatment by prayer, nor to interfere in any way with the practice of religion." The sense of this phrase, to my mind, may be expressed by saying that the act shall not be construed as intended to regulate, prohibit, or apply to any person who treats the sick or afflicted by prayer. The provision relating to religion is of no real effect, for the "practice" of a religion has not yet been commercialized in the sense that its tenets aim toward healing the sick of disease as its main purpose. It may be here noted that the prohibitory words of the act make it unlawful for any of those who fall within its description to diagnose disease, in which case the offenders may neither intend to treat the sick person or intend to prescribe for him in any

way. In that case the question of injury to a patient by misuse of remedies or appliances is not involved. However, except for the saving clause in favor of the practitioner by prayer, the act applies to every person who enters the field for the alleviating of human suffering, mental or physical, or of diagnosing ailments. It includes the masseur who treats by manipulation of the body with his hands and so relieves the aching joints of the rheumatic or the neuralgic pains of the nervous person, it includes those who may hold themselves out as being able or willing to treat corns or bunions, for who shall arise to say that an aching corn on the foot is not an ailment which demands and insists upon relief? It includes all sorts of mental healers under whatsoever name they may practice their theories; it affects those who claim to be able to relieve human suffering by the laying on of hands, or through their magnetic or electrical touch. And among all of these kindred modes of treating the sick the man or woman who bases his or her claim of healing power on the virtue of prayer and advertises that as his or her business, is exempt from the provisions of the act and is afforded a monopoly favored by the law in the practice of drugless treatment of disease. Such a person may diagnose the disease that he is to treat without falling under the opprobrium of the

law. This none of his fellow practitioners of drugless faith may do unless armed with the certificate issued by the board of medical examiners, which requires also, as a prerequisite, that certain courses of study shall have been pursued. By inference it must be concluded that the legislature, in drafting this act, determined that the practitioners of the exempted class were either qualified to engage in the business without examination as to the knowledge possessed by them of physical anatomy, etc., or that their methods of practice could not in any case produce harm to the individual. Of course the first suggested inference would be altogether unjustifiable to be made as a legislative determination, for there appears no natural or logical reason upon which to found it. Neither is the second deduction more justifiable when the purposes for which such acts are allowed are considered. Laws of the kind here under consideration are designed, presumptively, at least, not only to protect the sick and infirm from the injurious effects of ill-advised treatment for their ailments and diseases, but also to prevent the credulous sick from being imposed upon and to allow themselves to be deceived into the belief that a treatment that may be harmless in its direct effect upon them is beneficial, and so believing be mulcted of money while their disease may be growing worse for

lack of intelligent and competent attention. And why, if a drugless practitioner of the prohibited classes may not diagnose a case, even though he does not treat it, nor intend to treat it, should a practitioner who uses prayer as his announced panacea be allowed to practice diagnosis relieved of all penalties? It is not sufficient to say that because the remedy of prayer may be deemed not to harm the patient, the legislature based their exception upon a rational and satisfactory reason, for the causes which I have stated. A Washington decision states in comprehensive terms the limitations upon legislatures when enacting laws of this nature: "It is within the power of the legislature to pass such laws as will protect the people from ignorant pretenders, and secure them the services of respectable, skilled and learned men, although it is not within the power of the legislature to discriminate in favor of any particular school of medicine. When intelligent and educated men differ in their theories, the legislature has no power to condemn the one or approve the other, but it may require learning and skill in the school of medicine which the physician professes to practice." (*State v. Carey*, 30 Pac. 729.) Should it be argued that the construction which I have given to the clause providing that the provisions of the act should not be construed to "regulate or to apply to any kind of

treatment by prayer" is too broad, and that such proviso exempts only the treatment by such means and leaves the practitioner amenable to the other prohibitory sections of the act, such as forbid diagnosis, prescribing, etc., no different conclusion, to my mind, is suggested as to the special nature of the law. I have called attention to the reasons commonly given in the decisions which afford proper ground upon which to uphold legislation of this class. Can the legislature arbitrarily declare that the welfare of the public demands that in order to prevent the credulous sick from being imposed upon or injured through improper treatment of their diseases, all drugless practitioners should hold certificates showing them to have acquired certain knowledge of anatomy, etc., except that as to those practitioners using prayer as a mode of treatment no such preparatory knowledge is or should be required? To me the bare statement of the proposition suggests its own answer. In my opinion the provision of the act applying to the class denominated "drugless healers" is special and discriminatory, and therefore void.

The requirement that the drugless practitioners who fall within the regulatory provisions of the act shall be examined as to their knowledge of anatomy and histology, physiology and general diagnosis, pathology and elementary bac-

teriology, obstetrics and gynecology, toxicology and elementary chemistry, hygiene and sanitation, seems to me, as applied to those who may practice many of the well-known simple forms of treatment, to be unreasonable. A proper classification of the different practitioners as to their means and methods employed, exacting a degree of knowledge on those subjects which are involved in such practice, might answer to a valid requirement. It would seem that many of the subjects on which examination is required to be had would have not even a remote connection with the practice to be followed by the healer. In a case where like conditions of the law as applied to the masseur were considered by the Supreme Court of North Carolina, the court there said: "Patients have a right to use such methods as they wish, and the attempt to require an examination of the character above recited for the application of such treatments is not warranted by any legitimate exercise of the police power." *State v. Biggs*, 133 N. C. 729. It will not be profitable to enter into a dissertation upon the extent to which the police power of a state can go. That power is sometimes likened to the right of self-defense in the individual. It is broad and has to do with all laws or enactments of the people of the state, in whatever form they may be expressed, which will make for the security, comfort,

health and well being of the inhabitants. In the exercise of it, however, the restraint of the federal Constitution lends a compelling pressure, and no measure may be justified under police power which unduly interferes with the liberty of the citizen to pursue, unmolested and unrestrained and by his own means and methods, any calling of a lawful and proper nature. The main contention advanced in the briefs against the validity of the act, to-wit: that it is special legislation, and therefore unconstitutional and void, seems to be well founded. If that position is correctly taken, the question of the reasonableness of acts like that here considered had best be left until a case is presented where that proposition is given full attention in the arguments. * * *

The Fourteenth Amendment was undoubtedly intended that not only that there should be no arbitrary deprivation of life and liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment

should be interposed to the pursuits of any one, except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition.

Justice Swaine of the United States Supreme Court in the case of *In re Tiburcio Parrot*, 1 Fed. 481, held "Labor is property, and, as such, merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies, to a large extent, at the foundation of most other forms of property." And adding: "In our country, hostile and discriminating legislation by a state against persons of any class, sect, creed or nation, in whatever form it may be expressed, is forbidden by the Fourteenth Amendment of the Constitution."

In the case of the State versus Biggs, 133 North Carolina, page 729, Judge C. J. Clark rendered the following opinion:

"The special verdict found that the defendant advertised himself as a non-medical physician; that he held himself out to the public to cure disease by a system of drugless healing and treats patients by said system without medicine, claiming not to cure by faith; that he advertises to cure by natural methods without medicine or surgery. The only acts that he is

found by the verdict to have performed are that he administers massage, baths and physical culture, manipulates the muscles, bones, spine and solar plexus, and kneads the muscles with the fingers of the hand. He writes no prescriptions as to diet, but advises his patients what to eat and what not to eat; all the above treatment is administered to the exclusion of drugs. It was admitted that the defendant was not licensed by the State Medical Board, and claims no exemption under the provisions of the Act of 1903, as a nurse or midwife, nor as one curing by prayer, and then there is the important finding that the defendant charges a fee or reward for his services, and has treated patients by the above treatment and received payment therefor since the passage of chapter 697, Laws of 1903, 'to define the practice of medicine and surgery.' "

Section 3124 of the Code requires that every person who applies for license to practice medicine or surgery or any of the branches thereof shall stand an examination in anatomy, physiology, surgery, pathology, medical hygiene, chemistry, pharmacy, *materia medica*, therapeutics, obstetrics and the practice of medicine. There was added by chapter 117, Laws of 1885, the following provision: "And any person who shall begin the practice of medicine or surgery

in this state for fee or reward, after the passage of this act, without first having obtained license from said Board of Examiners (meaning the State Board of Medical Examiners) shall not be entitled to sue for or recover before any court any medical bill for services rendered in the practice of medicine or surgery or any of the branches thereof, but shall also be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25 or more than one hundred dollars or imprisoned at the discretion of the court for each and every offense."

The constitutionality of this act has been vigorously assailed in the courts on the ground that every one had an inalienable right to life, liberty and the pursuit of happiness," as our great Declaration phrases it, and that by that guarantee it is the right of every one to earn his livelihood by pursuing any calling or vocation not unlawful, and that to place his liberty to do so within the power of a committee chosen by those already pursuing any given calling would be to infringe upon section 7, article 1 of our state Constitution, which forbids exclusive privileges and emoluments to any set of men, and section 31 of the same article, which prohibits "monopolies and perpetuities." Of late years there has been added the argument that such act is also obnoxious to the Four-

teenth Amendment of the Constitution of the United States, which prohibits any state "to deny to any person equal protection of the law."

There was undeniably great force in the argument on that side. The law-making power slowly in this state and in others yielded to the view that it could or should pass such act. In 1858-59, chapter 258, it first incorporated the State Medical Society, and authorized the above examination, and prohibited any one to practice medicine or surgery or prescribe for the cure of diseases for fee or reward without such license, but was careful to add a proviso that no one who should practice without such license should be guilty of a misdemeanor, the only penalty being that if he practiced on credit he could not recover his fees in the courts. The law remained thus till the above-recited act, passed in 1885, and which was made prospective. The constitutionality of this last statute was fully considered, and after a most able argument against it by counsel was sustained by this court, but not without great hesitation, and upon the ground solely that the act was an exercise of the police power for the protection of the public against incompetents and imposters, and in no sense the creation of a monopoly or special privilege. *State v. Call*, 121 N. C. 646. If the object of the act could be construed as intended to give special and exclusive privileges

to a special body of men, and not solely and in truth for the protection of the public, the legislature was prohibited by the Constitution from enacting it, nor could the legislature restrict the cure of the body to the practice of medicine and surgery, or establish any state system of healing. *State v. McKnight*, 131 N. C. 723.

After these decisions moderation and wisdom would have suggested that the matter rest. Those who wish to be treated by practitioners of medicine and surgery had the guarantee that such practitioners had been duly examined and found competent by a board of gentlemen eminent in that high and honorable profession, and those who had faith in treatment by methods not included in the practice of medicine and surgery as usually understood, had reserved to them the right to practice their faith and be treated if they chose by those who openly and avowedly did not use either surgery or drugs in the treatment of diseases. The courts have declared that they possessed this right, and that the legislature could not, under the Constitution, restrict all healing to any one school of thought or practice. What is "the practice of medicine and surgery" is as well understood, and it limits, as the practice of dentistry. The courts have also held that of the many schools of medicine and surgery, the legislature could not prescribe that any one was orthodox

and others heterodox, but that those professing the different systems—"allopathic," "homeopathic," "Thompsonian" and the like—should be examined upon a course, such as is taught in the best colleges of that school of practice, but that it is not essential that a member of each, or of any special school, should be upon the Board of Examiners.

At the last session of the General Assembly the following act (1903, ch. 697), was passed amendatory of section 3122 of the Code: "For the purpose of this act the expression 'practice of medicine and surgery' shall be construed to mean the management for fee or reward of any case of disease, physical or mental, real or imaginary, with or without drugs, surgical operation, surgical or mechanical appliances, or by any other method whatsoever; provided that this shall not apply to midwives nor to nurses; provided, further, that applicants not belonging to the regular school of medicine shall not be required to stand an examination except upon the branches taught in their regular colleges, to-wit, the osteopaths, shall be examined only upon descriptive anatomy, general chemistry, histology, physiology, urinalysis and toxicology, hygiene, regional anatomy, pathology, neurology, surgery, applied anatomy, bacteriology, gynecology, obstetrics and physical diagnosis; provided this act shall not apply to any person

who ministers to or cures the sick or suffering by prayer to Almighty God, without the use of any drug or material means.”

Chief Justice Pearson in *McAden v. Jenkins*, 64 N. C. 801, noted as of common knowledge, and reiterated in *Railroad v. Jenkins*, 68 N. C. 505, that railroad charters are drafted by promoters and hence should be construed most strongly against the grantees and in the interest of the public. Though there may be no promoters here, the same rule applies to this act, amending the charter of this corporation, in whose supposed interests it was evidently drafted, and not solely in the interest of the public. Under the guise of construction of those well understood terms, the practice of medicine and surgery, the act essays to provide that the expression “practice of medicine and surgery shall be construed to mean the management ‘for fee or reward’ of any case of disease, physical or mental, real or imaginary, with or without drugs, surgical operation, surgical or mechanical appliances, or by any other method whatsoever.” That is, the practice of surgery and medicine shall mean practice without surgery or medicine if a fee is charged. If no fee is charged, then the words “surgery and medicine” drop back to their usual and ordinary meaning, as by long usage known and ac-

customed. Where, then, is the protection to the public, if such treatment is valid when done without fee or reward? Yet, unless the act confers, and is intended solely to confer, protection upon the public it, is invalid. The legislature cannot forbid one man to practice a calling or profession for the benefit or profit of another.

Again, the act means more than its friends probably intended, for it says: "Any case of disease, phsical or mental, real or imaginary." Is not a disease of the eye physical, and is not a disease of the ear, or of the teeth, or a headache, or a corn, physical? Then every dentist and aurist and oculist is indictable unless he has also license from the State Medical Society as an M. D., as is also every corn doctor who relieves aching feet, and every peripatetic of stentorian lungs on the court house square who banishes headache, real or imaginary, by rubbing his hands over some credulous brow. He, too, must be an M. D. Then there is the closing expression forbidding treatment for fee or reward by other than an M. D., by any other method whatsoever." This would take in all the old women and the herb doctors, who, without pretending to be professional nurses, relieve much human suffering, real or imaginary, for a small compensation. Then it is forbidden to relieve a case of suffering, physical or mental, in

any method unless one is an M. D. It is not even admissible to minister to a mind diseased in any method or even dissipate an attack of the blues without that label duly certified. Is not this creating a monopoly and the worst of monopolies that diseases shall not be cured or alleviated, whether real or imaginary, mental or physical, though without medicine or surgery, if for a fee, unless one has undergone an examination on anatomy, physiology, surgery, pathology, medical hygiene, chemistry, pharmacy, *materia medica*, therapeutics, obstetrics and the practice of medicine? Such examination is eminently proper for one who holds himself out as an M. D., and those who wish to employ an M. D. should certainly have the guarantee that is given by his license that the M. D. is competent. But how about those who are too poor or too ignorant or too perverse to wish that kind of treatment? Is it requisite that the man who treats a diseased ear shall really be competent in obstetrics, or that it is a penalty to treat a disease of the eye unless the operator understands chemistry, or that it is indictable in this state to remove corns or to plug teeth without full knowledge of the *materia medica*, or to banish headache by the application of the hands without having passed a satisfactory examination on anatomy, or to apply a fomentation without being able to pass upon

therapeutics, or to sell a little herb tea for the stomach-ache without being scientifically versed in pathology and physiology? The act is too sweeping. Besides, the legislature could no more enact that the practice of medicine and surgery shall mean practice without medicine and surgery than it could provide that two and two make five, because it cannot change a physical fact. And when it forbade all treatment of all diseases, mental or physical, without surgery or medicine, or by any other method, for a fee or reward, except by an M. D., it attempted to confer a monopoly on that method of treatment, and this is forbidden by the Constitution.

Our early legislation naturally gave physicians no special privileges, but it was directed solely to fixing a limitation upon their charges and providing penalties for malpractice. Were a monopoly of all treatment of diseases conferred upon M. D.'s it would necessarily follow that the legislature would have to prescribe their scale of charges again. That matter could not, with due regard to the public interest, be left to a monopoly. The medical profession merited and obtained a due share of prosperity prior to above statute of 1903 and will receive no great detriment because the defendant cannot be punished under its provisions.

Those not M. D.'s contend that the allopathic system of practice is contrary to the discoveries of science and injurious to the public. Some M. D.'s doubtless believe that all treatment of disease except by their own system is quackery. Is this point to be decided by the M. D.'s themselves through an examining committee of five of their own number, or is the public the tribunal to decide by employing whom each man prefers, whether allopath, homeopath, osteopath or the defendant? The law says that the M. D.'s may examine and certify whether an applicant is competent to be one of their number, and no one can practice medicine and surgery without it, but they cannot decide for mankind that their own system of healing is now and ever shall be the only correct one and that all others are to be repressed by the strong arm of the law. This act admits Christian Scientists to practice to cure diseases without such examination. By what process of reasoning can massage, baths and the defendant be excluded? In the cure of bodies, as in the cure of souls, "orthodoxy is my doxy, heterodoxy is the other man's doxy," as Bishop Warburton well says. This is a free country, and any man has a right to be treated by any system he chooses. The law cannot decide that any one system shall be the system he shall use. If he gets improper treatment for children or others under his care,

whereby they are injured, he is liable to punishment, but whether it was proper treatment or not is a matter of fact to be settled by a jury of his peers and not a matter of law to be decided by a judge nor prescribed beforehand by an act of the legislature.

The practice of medicine and surgery, in the usual and ordinary meaning of that term, is of the highest antiquity and dignity. In the Code of Hammurabi, King of Babylon, fifteen centuries older than the Code of Moses, and which, engraved on a column of black diorite, was but recently dug up at Susa in ancient Elam, there are found (sections 215-225) regulations of the medical profession, fixing a scale of fees and penalties for malpractice. Physicians are mentioned in both the Old and New Testaments. Jeremiah asks: "Is there no balm of Gilead? Is there no physician there?" The public have a right to know that those holding themselves out as members of that ancient and honorable profession are competent and duly licensed as such. The legislature can exert its police power to that end, because it is a profession whose practice requires the highest skill and learning. But there are methods of treatment which do not require much skill and learning, if any. Patients have a right to use such methods if they wish, and the attempt to require an examination of the character above recited for the

application of such treatment is not warranted by any legitimate exercise of the police power. The effect would be to prohibit to those who wish it those cheap and simple remedies, and deprive those who practice them of their humble gains, by either giving a monopoly of such remedies to those who have the title of M. D., or prohibiting the use of such remedies altogether, neither of which results the legislature could have contemplated, and both of which are forbidden by the provisions of the Constitution above cited.

In this case the defendant is found guilty of the following acts, and no more:

(1) Administering massage, baths and physical culture.

(2) Manipulating muscles, bones, spine and solar plexus.

(3) Kneading the muscles with the fingers of the hand.

(4) Advising his patients what to eat and what not.

And all this without prescriptions, without any drugs or surgery. These acts, by the terms of the statute, are harmless and not indictable unless done for fee or reward. There is nothing in this treatment that calls for an exercise of the police power by way of an examination by a learned board in obstetrics, therapeutics, *materia medica* and the other things, a knowl-

edge of which is so properly required for one who would serve the public faithfully and honorably as a doctor of medicine.

It is not only in the scope of the police power for the state to regulate the practice of medicine and surgery, and to throw around the public any reasonable protection against unfit members of that honorable profession and provide against malpractice, but the General Assembly can prohibit any pretended art of healing which is calculated to deceive and injure the public. It is also within its power to protect the public against the ignorant and vicious who profess knowledge and skill in any art or profession of healing in which technical knowledge and learning are required to safely and properly practice it. But it is not found here that the defendant is deceiving and injuring the public or is ignorant and incompetent, to the detriment of the public, in the application of the methods he uses. It may be that if he were not there some of the patients might call in an M. D., but that is due possibly to the ignorance or perversity of the patients who may prefer the defendant's methods and scale of fees. The police power does not extend to such cases.

The law is thus stated in *Lawton v. Steele*, 152 U. S., pp. 137, 138: "The legislature may not, under the guise of protecting public inter-

ests, arbitrarily interfere with private business or impose unusual or unnecessary restrictions upon lawful occupations. In other words, its determination of what is proper exercise of its police power is not final or conclusive, but is subject to the provision of the courts." After citing cases, it is said, on page 138: "In all those cases the acts were held to be invalid as involving an unnecessary invasion of the rights of property and a practical inhibition of certain occupations harmless in themselves and which might be carried on without detriment to the public interests." See also *State v. Pendergrass*, 106 N. C. 667; *Ohio v. Gardner*, 58 Ohio St. 588, 41 L. R. A. 689.

License is required for the practice of pharmacy, of dentistry, of law, and many other skilled professions. We have a state system of law, for the law is the state, and laws are prescribed by the legislature, and we also have a state system of education, yet it is not indictable for one not a lawyer to draw wills, deeds, bills of sale or any other legal instrument whatever, nor is it made punishable to settle litigation out of court by arbitration or otherwise without the aid of a lawyer, nor to teach in other than the state schools. Though there are many methods of treating disease, among which the legislature is not authorized to select one as the state system, excluding all others, yet this act, if valid,

would make it punishable by law to charge a fee for treatment of any disease, real or imaginary, mental or physical, by any method whatever, unless the party has been admitted by a committee from one school of treatment upon examination of that system, thus denying mankind any relief from pain and suffering except at the hands of that particular school of medical thought. It may be, and probably is, the best system. But that is a matter which must be decided by those who seek and must pay for the relief—not by the M. D.'s themselves nor by the courts. Judges are lawyers and are not competent to decide, except for themselves as individuals, which is the best system of treatment, and those practitioners who eschew medicine and surgery may well object to leaving the question whether medicine and surgery is the only permissible method of treatment to be decided by the practitioners of that method.

The defendant is not charged nor shown to be an osteopath, and disclaims being one. His learned counsel contends that the Act of 1903, chapter 697, is further unconstitutional because of the following (quoted from his brief): "There is no provision for the examination of any but allopaths and osteopaths. It provides that all persons, except midwives, nurses and those who profess to heal by prayer, who min-

ister to the sick for fee or reward, 'by any other method whatsoever,' shall be construed to be practicing medicine or surgery, and then follows the language: 'Provided further, that applicants not belonging to the regular school of medicine shall not be required to stand an examination except upon the branches taught in their regular colleges, to-wit, the osteopaths shall be examined only upon descriptive anatomy, general chemistry, histology, physiology, urinalysis and toxicology, hygiene, regional anatomy, pathology, neurology, surgery, applied anatomy, bacteriology, gynecology, obstetrics and physical diagnosis.' The osteopath is required to stand an examination in surgery and every other branch that those belonging to the regular school of medicine are required to be examined in, except pharmacy, *materia medica*, therapeutics and the practice of medicine, and in addition he is required to stand an examination in branches that the regular medical student is not required to be examined on, as follows: histology, urinalysis and toxicology, regional anatomy, neurology, bacteriology, gynecology and physical diagnosis. But it is remarkable that he is not required to pass examination in the branches that his profession recognizes and teaches to be of special importance in the practice of osteopathy, such as prin-

ciples of osteopathy, osteopathic manipulations and osteopathic diagnosis.

As his client is not an osteopath, we are not called upon in this case to pass upon the alleged discrimination against osteopaths in the prescribed course of study. But if it be objected that we have only shown that the defendant's practice did not call for the examination required, as above set out, for an allopath, it may be as well to say that the acts of which he was convicted of doing for a fee, to-wit, using massage, baths, physical culture, manipulating muscles, bone, spine and solar plexus, and advising his patients as to diet, could be done as safely to the public, so far as shown, without an examination on histology, urinalysis and toxicology, bacteriology, neurology and gynecology, which are some of the things added to the course by the aforesaid act, for the comfort and convenience of those wishing to obtain license to practice osteopathy, and of course only to protect the public against incompetents in that line of practice.

It is possible, however, that an expert knowledge of gynecology is not essential in administering baths, and there is room for serious doubt whether bacteriology and toxicology are connected with massage in any way.

The term "practice of medicine and surgery" embraces probably the larger and certainly by

far the most profitable part of the treatment of diseases, but is not co-extensive with the latter term and cannot be made so unless surgery and medicine are adopted as the state system of treatment, a monopoly, and all other methods are made indictable. On the other hand, the State Medical Society would hardly wish to broaden out so as to take in all methods of treatment of diseases, for this would be to take in practitioners and practices which they would not wish to recognize. All the law so far has done or can do is to require that those practicing on the sick with knife and drugs shall be examined and found competent by those "of like faith and order." Doctor Oliver Wendell Holmes, in an address before the Medical Society in Massachusetts, said: "If the whole *materia medica* was sunk to the bottom of the sea it would be all the better for mankind and all the worse for the fishes." An eminent medical authority in this state has said that out of twenty-four serious cases of disease three could not be cured by the best remedies, three others might be benefited, and the rest would get well anyway. Stronger statements could be cited from the most eminent medical authorities the world has known. Medicine is an experimental, not an exact, science. All the law can do is to regulate and safeguard the use of powerful and dangerous remedies, like the knife and drugs,

but it cannot forbid dispensing with them. When the Master, who was Himself called the Good Physician, was told that other than His followers were casting out devils and curing diseases, He said: "Forbid them not."

Judgment reversed.

The opinion of Judge Clark, of the Supreme Court of the state of North Carolina, in the case of the State versus McKnight, to which Judge James refers in his opinion, we quote in full as follows: "Chapter 117, Laws 1885, amending the code, Sec. 3132, under which this bill was drawn, reads as follows: 'Section 3122. And any person who shall begin the practice of medicine or surgery in this state, for fee or reward, after the passage of this act, without first having obtained license from said board of examiners, shall not only be entitled to sue for or recover, before any court, any medical bill for services rendered in the practice of medicine or surgery, or any of the branches thereof, but shall also be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned at the discretion of the court for each and every offense: Provided, that this act shall not be construed to apply to women who pursue the avocation of midwife; and provided

further, that this act shall not apply to regularly licensed physicians and surgeons resident in a neighboring state.'” This last clause has since been modified. Laws 1889, Chapter 181.

The constitutionality of this act was discussed and affirmed. *State v. Call*, 121 N. C. 643. The simple question, therefore, upon the facts set out in the special verdict is whether one who practices “osteopathy” is indictable if he has not procured the license required for any one by the above section before beginning “the practice of medicine or surgery.”

The special verdict finds that the defendant’s “treatment of his patients did not consist in the administration of drugs or medicines, but in manipulation, kneading, flexing and rubbing the body of his patients, and in the application of hot and cold baths, and in prescribing rules for diet and exercise, * * * that the defendant was engaged in the general practice of osteopathy, and professed to effect the cure of diseases by the practice of that science; that he also practiced hypnotism and suggestion under hypnotism.” It is also found that “upon two occasions he used a small surgeon’s knife in opening an abscess in the mouth of one Shedd, but charged no fee for his services.”

The only surgery was “without fee or reward,” an act of charity, and that was inci-

dental and not in the usual course of the practice of osteopathy. It can not be said that one "practices medicine and surgery" when he uses neither drugs, medicine nor surgery.

Section 3124 required the "Board of Medical Examiners" to examine all applicants "to practice medicine or surgery," in "anatomy, physiology, surgery, pathology, medical hygiene, chemistry, pharmacy, *materia medica*, therapeutics, obstetrics and the practice of medicine," almost all of which would be useless knowledge to exact of an osteopath who declines to use medicine, drugs or surgery, and whose treatment consists solely in kneading, flexing and rubbing the body, applying hot and cold baths, and prescribing diet and exercise.

It cannot be conceived that the Legislature would require the above examination for a profession which eschews the use of drugs and surgery. The medical society of this state being "allopaths," would certainly not recognize an "osteopath" as one of their body, any more than they would a "homeopath," nor license any one to pursue that calling with their diploma as his authority so to do, and if they would not, and we were to hold it indictable to practice osteopathy without such license, it would be a judicial prohibition upon the exercise of that phase of healing.

In *Smith v. Lane*, 31 N. Y. 632, construing a statute very similar to ours, it is said: "To entitle a person to a certificate under this provision, it would be necessary that he should be qualified either to practice medicine or surgery in all its branches. If that was not made to appear, he could receive no certificate under the provisions of this act. For that reason, it appears to be quite manifest that the object of the Legislature in the enactment of this chapter was only to provide for regulating the practice of medicine or surgery, as those terms are usually and generally understood, and confining them to such significance it is evident that they would not include the occupation of the plaintiff. The practice of medicine is a pursuit very generally known and understood, and so also is that of surgery. The former includes the application and use of medicines and drugs for the purpose of curing, mitigating or alleviating bodily diseases, while the functions of the latter are limited to manual operations usually performed by surgical instruments or appliances. It was entirely proper for the Legislature, by means of this chapter, to prescribe the qualifications of the persons who might be entrusted with the performance of these very important duties. The health and safety of society could be maintained and protected in no other manner. * * * No such danger could

possibly arise from the treatment to which plaintiff's occupation was confined."

In *State v. Leffring*, 61 Ohio St. 39, 46 L. R. A. 334, the same conclusion was reached, and also in *Nelson v. St. Board Health*, 22 Ky. 438, 50 L. R. A. 383. From this last case we learn that osteopathy originated with Dr. A. T. Still, of Kirksville, Mo., 1871, and that at a college of osteopathy in that state, in 1900 (when that opinion was filed) there were over five hundred students from twenty-nine states, besides several from Canada. And there are doubtless other colleges of osteopathy, for the special verdict finds that the defendant exhibited a diploma from the Columbia College of Osteopathy in Illinois.

It is argued to us that the science, if it be a science, of osteopathy is an imposition. Of that, we judicially speaking, know nothing. It is not found as a fact in this verdict. We only know that the practice of osteopathy is not the "practice of medicine or surgery," as commonly understood, and therefore it is not necessary to have a license from the Board of Medical Examiners before practicing it. If it is a fraud and imposition, and injury results, the osteopath is liable both civilly and criminally. Certainly "baths and diet" could be advantageously prescribed to many people, and

rubbing is well enough if the patient is not rubbed the wrong way. The real complaint is that osteopaths restrict themselves to these remedies, and do not resort to drugs and surgery, but that very fact established that they do not violate the law requiring a license to practice medicine and surgery. Doubtless there is an appeal to the imagination, but that is a necessary ingredient in all systems of healing. Who does not know that a prescription by a physician, in whom the patient has implicit confidence, is oftentimes more effective than the same treatment by one in whom he has none, and that at times bread pills and other harmless prescriptions are administered with good results? The aim of medical science, which is now probably the most progressive of all the professions, is simply to "assist nature." Osteopathy proposes to do that by other methods than by the use of medicines or the surgeon's knife.

We attach no weight to the argument that the defendant hung out his sign and advertised himself as "Doctor." The special verdict finds that he had a diploma from a college of osteopathy bestowing that title upon him. There are many kinds of doctors, besides doctors of medicine—as doctors of law, doctors of divinity, doctors of physics, and veterinary doctors, and others still. Besides, in this coun-

try, so far, at least, as titles go, "honors are easy." We know from common knowledge that druggists' clerks are ordinarily addressed as "doctor," Justices of the Peace as usually called "judge" and a teacher of the saltatory art always styles himself "professor," while "Yarborough House Colonels" and "honorables" by courtesy of like tenor are almost as

"Thick as autumnal leaves that strow the
brooks,

"In vallombrosa."

Certainly the courts can not abate a man as a nuisance because some one gives him, or he gives himself, a title.

If the General Assembly shall deem osteopathy a legitimate calling, it may see fit possibly to secure educated and skilled practitioners by requiring an examination and license by learned osteopaths of applicants for license, but certainly the examination would be on subjects appropriate to secure competency therein, and not on an entirely different course of learning, such as that prescribed for applicants to practice "medicine or surgery." *State v. Gravett*, 65 Ohio St. 289, 55 L. R. A. 791. Dentistry is not the "practice of medicine or surgery," but it is a related profession, as is also pharmacy, and each has its prescribed course of examination of applicants for license. Whether the same rights and dignity shall be bestowed

on osteopathy is a matter for the General Assembly, or if it is found to be a fraud and imposition, its exercise is indictable. It seems that it more nearly approximates "nursing" in many respects (though different in others), when taught as a profession, as it now is.

The state has not restricted the cure of the body to the practice of medicine and surgery—"allopathy," as it is termed—nor required that before any one can be treated for any bodily ill, the physician must have acquired a competent knowledge of allopathy, and be licensed by those skilled therein. To do that, would be to limit progress by establishing allopathy as the state system of healing, and forbidding all others. This would be as foreign to our system as a state church for the cure of souls. All the state had done has been to enact that when one wishes to practice "medicine or surgery," he must, as a protection to the public (not to the doctors), be examined and licensed to those skilled in "surgery and medicine." To restrict all healing to that one kind, to allopathy, excluding homeopathy, osteopathy and all other treatments, might be a protection to doctors in "surgery and medicine," but that is not the object of the act, and might make it unconstitutional, because creating a monopoly. The state can only regulate for the protection of the public. There is also "divine science" (which

some one has said is neither divine nor a science), and there may be other methods still. Whether these shall be licensed and regulated, is a matter for the law-making power to determine before any question in that respect can come before the court. Certainly a statute requiring examination and license "before beginning the practice of medicine or surgery" neither regulates nor forbids any mode of treatment which absolutely excludes medicines and surgery from its pathology.

All that the courts can declare upon the facts found in the special verdict is that the defendant's practice is not "the practice of medicine or surgery," and no license from the Medical Board of Examiners is required.

No error."

In line with the foregoing decisions we quote in full the opinion of Judge Bosworth of the Supreme Court of Rhode Island, reported in *Lawyers' Reports Annotated*, volume 41, page 428, as follows: "The defendant was adjudged probably guilty in the district court of the sixth judicial district upon complaint of Gardner T. Swarts, secretary of the state board of health. Said complaint which was made under chapter 165, R. I. Gen. Laws, alleges that the defendant, at Providence, on the 26th day of November, 1897, "did then and there practice

medicine and surgery for reward and compensation, without lawful license certificate and authority, and not being then and there duly registered according to law." The defendant upon arraignment, pleaded not guilty, and subsequently, and before judgment, raised a question of the constitutionality of said chapter 165, which question in accordance with the provisions of chapter 250, R. I. Gen. Laws, was certified and transmitted to the appellate division of the Supreme Court for decision.

R. I. Gen. Laws, chap. 165, provides for the registration of physicians, and its object is to regulate the practice of medicine and surgery. Under this chapter, authority to practice medicine and surgery is through a certificate issued by the state board of health, and said board, upon application, and without discrimination against any particular school or system of medicine, is required to issue such certificate to any reputable physician practicing, or desiring to begin the practice of medicine or surgery in this state, who possesses certain specified qualifications. Section 2 of said chapter, in part, is as follows: "Sec. 2. It shall be unlawful for any person to practice medicine or surgery in any of its branches within the limits of this state, who has not exhibited and registered in the city or town clerk's office of the city or town in which he or she resides,

his or her authority for so practicing medicine as herein prescribed, together with his or her age, address, place of birth, and the school or system of medicine to which he or she proposes to belong." Section 8 of said chapter is as follows: "Sec. 8. Any person living in this state or any person coming into this state, who shall practice medicine or surgery or attempt to practice medicine or surgery in any of its branches, or who shall perform or attempt to perform any surgical operation for or upon any person within the limits of this state for reward or compensation in violation of the provisions of this chapter, shall upon conviction thereof be fined \$50, and upon each and every subsequent conviction shall be fined \$100 and imprisoned thirty days, or either or both, in the discretion of the court; and in no case, where any provision of this chapter has been violated, shall the person so violating be entitled to receive compensation for services rendered. To open an office for such purpose, or to announce to the public in any other way a readiness to practice medicine or surgery in this state, shall be to engage in the practice of medicine within the meaning of this chapter." For the state, Everett Hall testified, substantially, that he called upon the defendant at his residence, and asked to be cured of malaria; that the defendant said that he was Dr. Mylod;

that the defendant sat looking at the floor, with his eyes shaded, as if engaged in silent prayer, for about ten minutes, and then, looking up, said, "I guess you feel better;" that defendant gave him a book entitled "A Defense of Christian Science"; that he gave defendant \$1; that defendant did not recommend nor administer any drug or medicine, nor take his pulse or temperature, nor do any of the things usually done by physicians. Clarence Vaughn, in behalf of the state, testified that he called upon the defendant at his residence on two occasions, and requested to be cured of the grippe; that he gave defendant \$1 each visit; that defendant said he was Dr. Mylod; that defendant gave him a card stating the defendant's office hours, and describing defendant as a Christian Scientist, but not in any way referring to defendant as a physician; that defendant did not take his pulse or temperature nor do any of the other things that physicians do in treating disease, but seemed to be sitting in silent prayer; that defendant gave him a book entitled "An Historical Sketch of Metaphysical Healing;" that defendant told him to look, not on the dark side of things, but on the bright side, and to think of God, and it would do him good, since thought governs all things. Dr. Gardner T. Swarts, secretary of the state board of health, testified that the defendant

is not a registered physician, that said defendant does not have authority to practice medicine in Rhode Island, and that physicians often cure disease without the use of drugs or medicine. For the defense, the character of the Providence Church of Christ, Scientist, was introduced in evidence, and the defendant testified, substantially, that he is the president and first reader or pastor of said church; that said church has been organized and has held regular religious services for seven years; that said church belongs to the sect known as Christian Scientists, in whose behalf God and Jesus Christ and the Bible hold a supreme place; that the principal distinguishing difference between Christian Scientists and other sects consists in the belief of the former regarding disease, which they believe can be reduced to a minimum through the power of prayer; that the public religious services of said church consist of silent prayer, music, reading of the scriptures and of extracts from "Science and Health," by Mary G. Baker Eddy; that he, beyond a greater realization of truth which his longer study of Christian Science may have given him, professed to have no greater power over illness than that possessed by members of his church; that he did not tell the witnesses Hall and Vaughn that he could cure them, nor did he call himself a doctor;

that he did not attempt to cure them by means of any power of his own; that he assured them that it is God alone who heals, acting through the human mind; that all he did was to engage in silent prayer for them, and to endeavor to turn their thoughts to God and towards the attainment of physical perfection; that the efforts made for them were precisely the same in character as those which he makes for his congregation at public services of his church; that he does not practice medicine, nor attempt to cure disease; that he has no knowledge of medicine or surgery; that, as a Christian Scientist, he never recommended to anyone a course of physical treatment; that he has only the method of prayer and effort to encourage hopefulness, for all who come to him in public or private, and whatever disease they imagine they have; and that his ministrations often can be and are rendered as effectively in the absence as in the presence of the beneficiary. Other witnesses were called, but there was no material variance in the testimony except that the witnesses Hall and Vaughn testified that the defendant said he was Dr. Mylod, which testimony was contradicted by the defendant.

The constitutional question raised by the defendant is that under sec. 3, art. 1, R. I. Const., which secures to him religious freedom, he had a right to perform the acts shown by the testi-

mony to have been performed, and that, therefore, said chapter 165, R. I. Gen. Laws, under which said complaint was made, is unconstitutional if, and in so far as, it provides a penalty for the performance of said acts. This question, properly, cannot be considered by the court unless said chapter 165 is sufficiently broad to include within its prohibitive provisions the acts of the defendant, for the defendant cannot question the constitutionality of said chapter unless his rights would be affected by its enforcement. *State v. Snow*, 3 R. I. 64. There is no testimony tending to show that the defendant practiced or attempted to practice surgery, or that he made any diagnosis or examination to ascertain whether witnesses Hall and Vaughn were suffering from disease, or that he administered or prescribed any drug, medicine, or remedy, or that he claimed any knowledge of disease or the proper remedies therefor. Upon the testimony, the only claim that can be made by the state is that upon a card handed to one of the witnesses appeared the name and office hours of the defendant; that the defendant said he was Dr. Mylod; that he offered silent prayer for the witnesses Hall and Vaughn, who claimed to be suffering from disease; that he gave said witnesses each a book in which, presumably, the principles of Christian Science were taught, explained, and defended; that he told the witness

Vaughn, substantially, to look on the bright side of things, and think of God, and it would do him good; and that he accepted compensation for his services. Did these acts of the defendant constitute the practice of medicine, in violation of chapter 165, R. I. Gen. Laws? It is the duty of the court to give effect to the intention of the law-making power as embodied in the statutes. The legislaure is presumed to mean what it has plainly expressed, and, when it has so expressed its meaning, construction is excluded. It is only when the meaning of a statute is obscure or the words employed are of doubtful meaning, that, in order to give effect to the legislative intention, the duty of construction arises. In the construction of penal statutes a well-established rule is that words and phrases must be taken in their ordinary acceptance and popular meaning, unless a contrary intent appears. While the words of such statutes are not to be restricted in meaning within the narrowest limits, neither are they to be extended beyond their common interpretation; and, if there is a reasonable doubt as to whether the acts done are within the meaning of the statute, the party accused of its violation is entitled to the benefit of that doubt. Endlich, Interpretation of Statutes, sections 329, 330. It follows, therefore, that the acts complained of are excluded from the operation of said chapter 165,

unless the words "practice of medicine," taken in their ordinary or popular meaning, include them, or unless it appears from said chapter that the legislative intent was to give to said words a meaning broader and more inclusive than the popular one.

Medicine, in the popular sense, is a remedial substance. The practice of medicine, as ordinarily or popularly understood, has relation to the art of preventing, curing, or alleviating disease or pain. It rests largely in the sciences of anatomy, physiology, and hygiene. It requires a knowledge of disease, its origin, its anatomical and physiological features, and its causative relations; and, further, it requires a knowledge of drugs, their preparation and action. Popularly, it consists in the discovery of the cause and nature of disease and the administration of remedies or the prescribing of treatment therefor. Prayer for those suffering from disease, or words of encouragement, or the teaching that disease will disappear and physical perfection be attained as a result of prayer, or that humanity will be brought into harmony with God by right thinking and a fixed determination to look on the bright side of life, does not constitute the practice of medicine in the popular sense. The state, however, contends that said chapter 165, taken as a whole, indicates a legislative intention to give to the words

"practice of medicine" a meaning broader than the popular one. In support of this contention it calls attention to the provision contained in section 8 of said chapter that "to open an office for such purpose (that is, for the practice of medicine or surgery) or to announce to the public in any other way a readiness to practice medicine or surgery in this state, shall be to engage in the practice of medicine within the meaning of this chapter." In view of this provision the state contends that to practice medicine is not necessary to use internal or other remedies, nor to make diagnoses, nor to have a patient, but that the opening of an office for the practice of medicine or the announcement of a readiness to engage in such practice, constitutes a practice of medicine; and, therefore, as the statute applies not only to those who actually practice, but also to those who announce in any way a readiness to practice, the state contends that the legislature intended to give a broader than the generally accepted meaning to the words "practice of medicine." We are unable to agree with this contention. Without passing upon the provision referred to, and whatever its significance, it certainly cannot be construed to broaden, in a general sense, the meaning of the words "practice of medicine." The most that can be claimed for it is that it operated to broaden the offense created

by said chapter 165, so that the attempt or the announcement of a readiness to practice medicine becomes equivalent to the actual practice.

The state further calls attention, in support of its contention, to section 6 of said chapter, which provides that "nothing in this chapter shall be so construed as to discriminate against any particular school or system of medicine"; and it argues that, as the statutory prohibition relates to the practice of medicine "in any of its branches," and that as certain diseases—such as insanity and nervous prostration—are treated by the so-called "regular school" without the use of drugs, and that as all schools recognize the study of mental conditions as affecting bodily health as forming a distinct branch of medicine, the legislative intention to give to the words "practice of medicine" a construction sufficiently broad to include the practice of Christian Science is clearly manifest. The words of the provision against discrimination, like the words "practice of medicine," must be taken in their ordinary sense and meaning. It is a matter of common knowledge that among medical men there are defined differences regarding the treatment of disease. These differences have resulted in different schools or systems of medicine. A recognition of the existence of such differences, however, does not broaden the meaning of the words "practice of

medicine" to include the practice of that which, in the popular sense, is not a practice of medicine. Neither does the statutory reference to the practice of medicine "in any of its branches" affect the meaning of the words in question. While it is true that the study and treatment of mental disease constitute one of the departments or branches of medicine in which the influence of the mind over the body is recognized, yet mere words of encouragement, prayer for divine assistance, or the teaching of Christian Science as testified, in the opinion of the court does not constitute the practice of medicine in either of its branches, in the statutory or popular sense. To give to the words "practice of medicine" the construction claimed for them by the state in the opinion of the court, would lead to unintended results. The testimony shows that Christian Scientists are a recognized sect or school. They hold common beliefs, accept the same teachings, recognize as true the same theories and principles. If the practice of Christian Science is the practice of medicine, Christian Science is a school or system of medicine, and is entitled to recognition by the state board of health to the same extent as other schools or systems of medicine. Under said chapter 165 it cannot be discriminated against, and its members are entitled to certificates to practice medicine provided they possess the stat-

utory qualifications. The statute, in conferring upon the state board of health authority to pass upon the qualification of applicants for such certificates, does not confer upon said board arbitrary power. The board cannot determine which school or system of medicine, in its theories and practices, is right; it can only determine whether the applicant possesses the statutory qualification to practice in accordance with the recognized theories of a particular school or system. It would be absurd to hold that under said chapter 165, which provides against discrimination, the requirements necessary to entitle an applicant to a certificate were such that the members of a particular school or system could not comply with them, thus adopting a construction which would operate, not as a discrimination only, but as a prohibition. On the other hand, to hold that a person who does not know or pretend to know anything about disease, or about the method of ascertaining the presence or the nature of disease, or about the nature, preparation, or use of drugs, or remedies, and who never administers them, may obtain a certificate to practice medicine, is to hold that the operation of the statute is to defeat the beneficial purposes for which it was enacted.

The cases cited by the state do not sustain its contention. In *Nelson v. Harrington*, 72

Wis. 591, 1 L. R. A. 719, the plaintiff brought suit against the defendant, who was a clairvoyant physician, to recover damages for alleged unskillful treatment. In testimony it appeared that the defendant held himself out as a healer of disease, and accepted compensation; that he determined the nature of the disease for which he treated the plaintiff and the character of the remedies he administered, while in a mesmeric state or trance condition. The court held that the defendant was bound to exercise reasonable skill, and that the knowledge of the plaintiff of his methods was no defense to the action. In *Bibber v. Simpson*, 59 Me. 181, which was an action brought to recover compensation for services, the opinion of the court is as follows: "The services rendered were medical in their character. True, the plaintiff does not call herself a physician, but she visits her sick patients, examines their condition, determines the nature of the disease, and prescribes the remedies deemed by her most appropriate. Whether the plaintiff calls herself a medical clairvoyant, or a clairvoyant physician, or a clear-seeing physician, matters little; assuredly, such services as the plaintiff claims to have rendered purport to be, and are to be deemed, medical and are within the clear and obvious meaning of Rev. Stat. 1871, chap. 13, sec. 3, which provides that "no person except a

physician or surgeon, who commenced prior to February 16, 1931, or has received a medical degree at a public medical institution in the United States, or a license from the Maine Medical Association, shall recover any compensation for medical or surgical services, unless previous to such services he had obtained a certificate of good moral character from the municipal officers of the town where he then resided." The plaintiff has not brought herself within the provisions of this section and cannot maintain this action." In *Wheeler v. Sawyer* (Me. 1888), 15 At. 67, the plaintiff, a Christian Scientist, brought suit to recover for services. Section 9, chap. 13, Rev. Stat. 1883, is the same as section 3, chap. 13, Rev. Stat. 1871, except that it does not relate to physicians and surgeons practicing prior to February 16, 1831. The plaintiff had received the certificate of good moral character required by statute. The court said: "We are not required here to investigate 'Christian Science.' The defendant's intestate chose that treatment, and received it and promised to pay for it. There is nothing unlawful or immoral in such a contract. Its wisdom or folly is for the parties, not the court, to determine." In *State v. Buswell*, 40 Neb. 158, 24 L. R. A. 68, the defendant was indicted for the unlawful practice of medicine. In *Nebraska* (Laws 1891, chap. 35) the practice of medicine,

surgery and obstetrics is prohibited except by persons possessing certain qualifications. Section 17 of said chapter 35, in part, is as follows: "Sec. 17. Any person shall be regarded as practicing medicine within the meaning of this act who shall operate on, profess to heal, or prescribe for or otherwise treat any physical or mental ailment of another." The defendant was a Christian Scientist, and the evidence against him upon which the state relied was similar in character to that in the case under consideration. The trial court instructed the jury that, in order to convict the defendant, they must find that the defendant had practiced medicine, surgery or obstetrics, as those terms are usually and generally understood, and the state excepted. The Supreme Court, in sustaining the exception, uses the following language: "Governed by this instruction, the jury could not do otherwise than acquit, for there was no proof to meet its requirement." Again: "The statute does not merely give a new definition to language having already a given and fixed meaning. It rather creates a new class of offenses in clear and unambiguous language, which should be interpreted and enforced according to its terms." Again: "Under the indictment the sole question presented upon the evidence was whether or not the defendant, within the time charged, had operated on or professed to heal,

or prescribe for, or otherwise treat any physical or mental ailment of another." The decision of the Nebraska court, therefore, is that, while the practice of Christian Science is not a practice of medicine as those terms usually and generally are understood, yet, that, under the section above quoted, the practice of Christian Science, being a treatment for physical or mental ailments, is a violation of the law. In Missouri the statute requires that before a person may lawfully practice medicine or surgery he must file a copy of his diploma with the clerk of the county court, and it further provides (Rev. Stat. sec. 6304) that any person, not qualified, who shall practice medicine or surgery, shall not be permitted to recover compensation for services rendered "as any such physician or surgeon." In *Davidson v. Bohlman*, 37 Mo. App. 576, the plaintiff having brought suit to recover for services, the question raised was whether the services were performed by the plaintiff as a physician. The plaintiff had practiced medicine lawfully for nearly thirty years, first as an allopathic physician and later as an electric physician. He had a diploma from an electric medical college, but had failed to file a copy of it as required by law. The services for which he claimed compensation consisted of electric treatment. The bill for services furnished the defendant described the plain-

tiff as "Dr. T. P. Davidson," and the plaintiff called a medical practitioner to testify to the value of the services in question. The court of appeals, upon the testimony, held that the services were performed by the plaintiff as a physician, and that, not being qualified to practice, he could not recover. The assumption of the title of "doctor," if defendant assumed such title, was not unlawful. Chapter 165 does not, in terms, prohibit the use of the word "doctor" by any person, whatever his business or profession may be. Its use is entirely immaterial in any case, unless under such conditions or circumstances, or in such connection, that it may serve as an announcement or indication of a readiness to engage in the practice of medicine or surgery. The object of the statute in question is to secure the safety and protect the health of the public. It is based upon the assumption that to allow incompetent persons to determine the nature of disease, and to prescribe remedies therefor, would result in injury and loss of life. To protect the public, not from theories, but from the acts of incompetent persons, the legislature has prescribed the qualifications of those who may be entitled to perform the important duties of medical practitioners. The statute is not for the purpose of compelling persons suffering from disease to resort to remedies, but is designed to secure to

those desiring remedies competent physicians to prepare and administer them. See *Smith v. Lane*, 24 Hun. 632.

The opinion of the court is that the words "practice of medicine" as used in R. I. Gen. Laws, chap. 165, must be construed to relate to the practice of medicine as ordinarily and popularly understood, and that the acts of the defendant do not constitute a violation of said chapter. The court therefore cannot properly pass upon the constitutional question raised, for the rights of the defendant would not be affected by any conclusion at which the court might arrive."

We next quote from the opinion of Judge C. J. Hill, of the Supreme Court of Georgia, in the case of *Bennett v. Ware*, reported in volume 61, *Southeastern Reporter*, page 546, as follows:

"The plaintiff in error was arrested on a warrant sworn out by the defendant in error charging him with practicing medicine without a license, in violation of the statutes of this state. On a preliminary investigation he was discharged, and thereupon he brought suit against the defendant in error for malicious prosecution and false imprisonment. In the petition he alleges that at the time of his arrest and incarceration in the common jail he was engaged in the "profession of healing diseases

without the use of medicine," commonly and better known as a "Magic Healer"; that he "heals the sick without the use of medicine in any form or manner whatever, by placing his hands upon that portion of the body that is affected by pain; that this gift or magic power is given him direct from the Lord"; that he made no charge for his services, but accepted such compensation as the gratitude of his patients induced them to voluntarily offer, and that, as a result of his arrest and prosecution for practicing medicine without a license he suffered great humiliation and mortification, lost two days' compensation in "gifts" amounting to \$25 per day, was put to an expense of \$15 in employing a lawyer to defend him against the untruthful accusation, and, in fact, "lost almost his entire practice"; that his prosecution was malicious and without probable cause, and he claims to have been damaged in the sum of \$5,000. A demurrer was filed to this petition on the ground that the allegation showed that the plaintiff was in fact practicing medicine and suggesting remedies for the sick and afflicted, and receiving compensation therefor, without complying with the statutes of the state regulating the practice of medicine, and, therefore, that there was probable cause for his arrest and prosecution. The demurrer was sustained, and this judgment comes to this court.

The direct question for determination is whether the plaintiff, under the facts set out in his petition, was engaged in the practice of medicine as defined by the statutes of this state. He insists that his practice is neither within the letter nor the spirit of the law. By virtue of its police power the state has enacted legislation to protect the public against unfit and incompetent practitioners of medicine, and to prevent the hurtful results of malpractice. A construction of this legislation will determine the issue made by the record. Section 1477 of the Political Code of 1895 prescribed who shall be authorized to practice medicine in this state. The practicing physician is required to have "a diploma from an incorporated medical college, medical school or university," or shall be one who has been "in active practice of medicine since the year 1866" after having attended "one or more full terms at a regularly chartered medical college," "or who was by law authorized to practice medicine in 1866, or shall have been licensed by the medical board." It is further provided that the governor of the state shall appoint three separate boards of medical examiners, each board to consist of five members selected from the three schools or systems of medicine designated by the statute, to-wit, the "regular" or allopathic school, the homeopathic and the eclectic school. Persons who desire to

practice medicine, and who are graduates of any incorporated medical college, school or university requiring the designated course of study, are to be examined by one of these boards, the graduate of a particular school to be examined by the board composed of practitioners of that school. But if the applicant desires to practice a system not represented by any one of the three boards, he may elect for himself the board before which he will appear for examination. When the examination is satisfactory, the applicant is granted a certificate allowing him to practice medicine upon complying with the law in reference to registration. Pol. Code 1895, sections 1479, 1482, 1486. Section 1478 of the Political Code of 1895 undertakes to define the practice of medicine. "The words 'practice medicine' shall mean, to suggest, recommend, prescribe or direct, for the use of any person, any drug, medicine, appliance, apparatus, or other agency, whether material or not material, for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or other bodily injury or any deformity, after having received or with the intent of receiving therefor, either directly or indirectly, any bonus, gift or compensation." Section 1490 declares that "any person shall be regarded as practicing medicine or surgery, within the meaning of this

article, who shall prescribe for the sick or those in need of medicine or surgical aid, and shall charge or receive therefor money or other compensation, or consideration, directly or indirectly."

In construing these statutes it is apparent that the law of this state recognized only three systems or schools of medicine—the "regular," the homeopathic, and the eclectic schools. It is impossible for one who desires to practice any other system to do so in this state as a practitioner of medicine, because under the law he cannot procure a license. In other words, the law only proposes to grant a license to practice medicine to the allopath, the homeopath, or the eclectic. It is true the statute provides that, "if the applicant desires to practice a system not represented by any of the" three boards, "he may elect for himself the board before which he will appear for examination" (section 1486); but this is a barren privilege, for none of the three boards can or will examine any applicant except one who has a diploma from a regular medical college, or who proposes to practice one of the three systems. For instance, none of the boards will recognize a diploma of an osteopath issued by an osteopathic school, because such school is not a regular school, and none of the boards would be competent to examine the

osteopathic applicant on the system that he had studied, and the applicant would not be competent to pass an examination in any of the systems represented by the boards, for such systems formed no part of his curriculum. It would be absurd to say that one who practiced the healing art by magnetism, Christian Science, spiritism, hypnotism, mesmerism, or any other form for the treatment of disease based upon a supernatural agency would be entitled to be examined by any one of the medical boards of the state; for the science of medicine is based on natural agencies. We therefore conclude that only those who propose to practice medicine by one of the schools or systems recognized by the statutes of this state are required to have a license.

But it is said that section 1478 of the Political Code of 1895 undertakes to define the practice of medicine, and that this definition embraces the particular practice of the plaintiff in error. He expressly disclaims the use of medicine in any form whatever in his treatment of diseases, and therefore he must be excluded from the specific words of the definition, because he did not suggest, recommend, prescribe, or direct the use of any drug or medicine, appliance, or apparatus. According to his statement, his method consisted simply in laying his hands on the sick at the point or place of pain or disease, and the

healing which followed was by a direct divine agency. Do the words in the statutory definition above given, "or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body," embrace an agency of this character? It may be conceded that the words "material or not material" are sufficiently broad to include at least every human or natural agency. But was it intended by the legislature to denominate as a medical agency, whether material or not material, an agency claimed to be supernatural? It is true that faith on the part of the sick is a potent influence in all treatment of disease; but can it be said that faith is an agency? Are the sick who may be cured by magnetism, mesmerism, or hypnotism cured by any medical agency; or is an answer to prayer such an agency and the person who prays practicing medicine? We cannot believe that the legislature intended to include in the practice of medicine what may be called psycho-therapeutics, or any form of the treatment of the sick which makes faith the curative agency. But the words, "other agency," "material or not material," should be construed in obedience to the maxim, "*Noscitur a sociis*," and the meaning of the word "agency" must be limited by the associated words "drug, medicine, appliance, apparatus." In other words, the word "agency," even as qualified by the

words "material or not material," was intended by the legislature to mean a substance of the general character of a drug or medicine, or surgical apparatus or appliance, the obvious purpose being to protect society against the evils which might result from the use of drugs and medicines by the ignorant and unskillful. The purpose of the act is clearly indicated by its title, "to regulate the practice of medicine." It was not intended to regulate the practice of mental therapeutics, or to embrace psychic phenomena. These matters lie within the domain of the supernatural. Practical legislation has nothing to do with them. If they are a part of man's faith, the right to their enjoyment cannot be abridged or taken away by legislation. However the so-called wisdom of this world may regard these things, it cannot be denied that, long before the Savior told His disciples that in His name they should heal the sick and prevent all manner of diseases by the laying on of hands, the practice of healing by means of prayers, ceremonies, laying on of hands, incantations, hypnotism, mesmerism, and other forms of psycho-therapeutics existed. To the iconoclast who denounces these things as the figments of superstition, or to the orthodox physician who claims for his system all wisdom in the treatment of human malady, we commend the injunction of Him who was called "the

Good Physician," when told that others than His followers were casting out devils and curing diseases: "Forbid them not." What matters the system if, in fact, devils are cast out and diseases are healed?

Going back to the question now under consideration, we deduce the following proposition: That the practice of medicine, defined by the code, *supra*, is limited to prescribing or administering some drug or medicinal substance, or to those means and methods of treatment for prevention of disease taught in medical colleges and practiced by medical practitioners; that the purpose of the act regulating the practice of medicine was to protect the public against ignorance and incompetency by forbidding those who were not educated and instructed as to the nature and effect of drugs and medicine, and for what diseases they could be administered, from treating the sick by such medical remedial agencies; that the law is not intended to apply to those who do not practice medicine, but who believe, with Dr. Holmes, that "it would be good for mankind, but bad for the fishes, if all the medicines were cast into the sea," nor to those who treat the sick by prayer or psychic suggestion. In the language of Chief Justice Clark: "Medicine is an experimental, not an exact science. All the law can do is to regulate and safeguard the use of

powerful and dangerous remedies; * * * but it cannot forbid dispensing with them." "All the law so far has done or can do is to require that those practicing on the sick with drugs * * * shall be examined and found competent by those 'of like faith and order.'" *State v. Biggs*, 133 N. C. 729, 46 S. E. 401, 64 L. R. A. 139, 98 Am. St. Rep. 741. We are therefore clear that plaintiff in error was not a practitioner of medicine in the sense of our statute or in the popular sense; and the fact that he received fees and compensation for treatment in the shape of gifts should not make what would otherwise not be the practice of medicine a violation of the statute regulating such practice, for it must be apparent that, if the mere laying on of hands amounts to the practice of medicine in any sense, it is so without reference to fee or reward.

In the view herewith presented we are strengthened by the decisions of courts of last resort in this country construing similar statutes. Osteopathy, a system of treating disease without the use of medicine in any form (which has made great advances in recent years, and, if the testimony of many intelligent men and women is to be believed, has worked many cures), has been frequently held not to be included in the term "practice of medicine and surgery," and therefore not included in the stat-

ute regulating the practice of medicine and surgery. The earliest case on the subject is that of *Smith v. Lane*, 24 Hun. 632, in which the Supreme Court of New York held that the practice of osteopathy was not included in the statute, which declared it to be a misdemeanor for any person to practice medicine or surgery who was not authorized to do so by a license or diploma from some chartered medical school, state board of medical examiners, or medical society. This decision was based upon the idea that under the statute of New York no one would be issued a license to practice medicine unless he had a diploma from a regular medical college; the court giving to the words "practicing medicine" their usual, ordinary, and popular significance, and asserting that the purpose of the act was to prevent incompetent or unqualified persons from administering or applying medical agencies, or performing surgical operations that might be dangerous to the health, as well as to the lives, of the persons treated or operated upon, and that the purpose of the statute was to define the use of medicines and the operation of surgery to a class of persons who, upon examination, should be found competent and qualified to follow these professional pursuits, but that no such danger could possibly arise from the treatment of an osteopath, and for that reason no necessity existed for inter-

fering with his pursuit by legislative action. A similar ruling was made in the case of an osteopath by the Supreme Court of Ohio, in the case of *State v. Liffing*, 61 Ohio St. 39, 55 N. E. 168, 46 L. R. A. 334, 76 Am. St. Rep. 358. The Ohio statute, entitled "An act to regulate the practice of medicine," in defining the "practice of medicine" uses the words, "prescribe, direct, or recommend for the use of any person any drug or medicine, or other agency." That court held that a "system of rubbing and kneading the body," commonly known as osteopathy, for the treatment, cure and relief of diseases and bodily infirmities, was not an "agency" within the meaning of the statute. The Supreme Court of Kentucky, in *Nelson v. State Board of Health*, 108 Ky. 769, 57 S. W. 501, 50 L. R. A. 383, held that one who practices osteopathy, not using medicine or surgical appliances, is not engaged in the practice of medicine within the meaning of the statute requiring a license for such practice, the language construed being, "to open an office for the practice of medicine, or to announce to the public in any way a readiness to treat the sick or afflicted, shall be deemed to engage in the practice of medicine within the meaning of this act"; and that the language referred only to those essaying to practice medicine proper by the use of drugs. In the case of *State v. Mc-*

Knight, 131 N. C. 717, 42 S. E. 580, 59 L. R. A. 187, the Supreme Court of that state held that an osteopath was not embraced within the term "practice of medicine." Chief Justice Clark, speaking for the court, says: "The state has not restricted the cure of the body to the practice of medicine and surgery—'allopathy,' as it is termed—nor required that, before any one can be treated for any bodily ill, the physician must have acquired a competent knowledge of allopathy, and be licensed by those skilled therein. To do that would be to limit progress by establishing allopathy as the state system of healing, and forbidding all others. This would be as foreign to our system as a state church for the cure of souls. All the state has done has been to enact that, when one wishes to practice medicine or surgery, he must, as a protection to the public (not to the doctors), be examined and licensed by those skilled in surgery and medicine. The state can only regulate for the protection of the public. There is also 'divine science' (which some has said is neither divine nor science), and there may be other methods still. Whether these shall be licensed and regulated is a matter for the law-making power to determine. Certainly a statute requiring examination and license before beginning the practice of medicine or surgery neither regulates nor forbids any mode of treatment

which absolutely excludes medicine and surgery from its pathology." In a subsequent case the same court, by the same learned jurist, in a very elaborate opinion, reaffirmed the decision in the McKnight case, declaring that one who holds himself out as curing diseases by a system of drugless healing without medicine or prescription, and who charges and receives fees therefor and has no license, is not guilty of practicing medicine or surgery without license. *State v. Biggs, supra*. The Supreme Court of Mississippi, in the case of *Hayden v. State*, 81 Miss. 291, 33 South. 653, 95 Am. St. Rep. 471, in construing a statute in *totidem verbis* as the statute of this state, declared that it did not apply to an osteopath who used no drug or medicine, and that the word "agency," used in the statute, was not intended to include such treatment. Many other courts, construing statutes substantially similar to ours, have made like decisions.

We admit that there are some decisions that hold the contrary; but we believe that the better rule and one more in consonance with reason and in harmony with the republican character of our institutions is that all statutes for the regulation of the practice of medicine can be sustained only on the ground that they are necessary to protect the public against quack medical practitioners and impostors who pre-

scribe drugs and medicines in treating diseases, and that these statutes are not directed against or intended to include those who eschew the practice of medicine altogether, but advance some new theory, such as osteopathy, for the alleviation of pain and the curing of the sick, or those who heal or pretend to heal the sick by any form of mental therapeutics such as Christian Science, magnetic treatment, hypnotism, and the like. As to the science of osteopathy, it may be remarked that a majority of the states have, by appropriate legislation, recognized it as a legitimate treatment of the sick and as not included within existing statutes regulating the practice of medicine. We think these constitute legislative precedents in favor of the construction which we place upon the act in question; and we think, further, that the medical profession represented by the medical boards of this state who are charged with the duty of enforcing the law which regulates the practice of medicine gives the same construction to the statute in its omission to interfere with the rapidly increasing practice of osteopathy. We would not be understood as meaning to embrace the osteopath in the same class with the magnetic healer. The practice of osteopathy is entirely antithetic in magnetic healing. The former relies entirely upon natural agencies—indeed, we may say physical agencies—while

the latter relies solely upon the supernatural. We cite the decisions construing osteopathy as illustrations of our construction of the statute defining the practice of medicine, the argument drawn therefrom being that if the practice of osteopathy, which does require a knowledge of anatomy, physiology, pathology, and what may be called the fundamentals of medical and surgical practice, is not included in such statutes, the practice of the "magic healer" certainly cannot be. In the language of the Supreme Court of Mississippi: "A wise legislature some time in the future will doubtless make suitable regulations for the practice of osteopathy, so as to exclude the ignorant and unskillful practitioner of the art among them. The world needs, and may demand, that nothing good or wholesome shall be denied from its use and enjoyment." *Hayden v. State, supra*. The Supreme Court of Rhode Island, in the case of *State v. Mylod*, 20 R. I. 632, 20 Atl. 753, 41 L. R. A. 428, holds that the practice of Christian Science is not the practice of medicine, and is not included within the act regulating the practice of medicine.

We therefore hold that, under the allegations of the petition, the plaintiff in error was not engaged in the practice of medicine, and therefore was not violating the law regulating such practice in this state. But we do not think that the plaintiff in error was entitled to recover

damages for malicious prosecution from the physician who swore out the warrant against him. The question of law involved was sufficiently in doubt, in its application to his practice, to fully warrant a legal investigation of the question; and, in taking out the warrant, the defendant was fully justified by the existence of probable cause, and his act was without malice, and in behalf of the public. Besides, we think that the practice of the plaintiff in error, while not in violation of the statute regulating the practice of medicine, was presumptively an imposition upon the credulity of the public, which might in its consequences result in much injury, and that he was exercising a pretended power of magnetic healing to the deception of the people, and was obtaining their money in the shape of gifts under false pretenses, and we do not think that the law should permit him to recover damages resulting from a legitimate effort on the part of a citizen to test the legality of his practice. We therefore affirm the judgment of the court below in sustaining the demurrer and dismissing the petition.

Judgment affirmed."

We next quote from the opinion of Judge Terrall, of the Supreme Court of Mississippi, in the case of *Hayden v. State*, reported in volume 81, Mississippi Reports, page 297.

"Hayden was indicted in the Circuit Court of Alcorn county for practicing as a physician without first having been examined and obtained a license so to do. The facts of his alleged offense were admitted to be as follows, and upon this admission the case was submitted to the jury: "That the defendant practiced in this (Alcorn) county what is known as 'osteopathy' in the American School of Osteopathy, in Kirksville, Mo., from which school he is a graduate. That in treating diseases, and in his treatment of the witnesses for the state in this case, to-wit, W. W. Kemp and James A. Carter, he did not use any drug or medicine, but his treatment consisted of manipulating scientifically the limbs, muscles, ligaments and bones which were pressing on the nerves of the blood supply. This treatment was had so that nature would have free action. That in his treatment of diseases or pains he is confined solely to his manipulation as above described. That for said services to said Carter and Kemp he received pay. The witnesses were being treated for rheumatism, and claimed that they have entirely recovered, as a result of this treatment." The above is agreed as being all the facts in the case. The court instructed the jury that, if they believed the admitted facts, they should convict the defendant. This they did, and thereupon the court

imposed a fine of \$20 upon the defendant. From this judgment he appeals.

The sole question is whether, under ch. 68, acts 1896, an osteopath is required to be examined and licensed for the practice of his branch of the healing art. The Act of 1896, so far as it is necessary to be known for the right understanding of this case, provides: "That the practice of medicine shall mean to suggest, recommend, prescribe, or direct for the use of any person, any drug, medicine, appliance or agency, whether material or not material, for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound or fracture or other bodily injury or deformity, or the practice of obstetrics or midwifery, after having received, or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, profit or compensation." It is perfectly manifest, as we think, from the agreed statement of facts, that Hayden used neither drug nor medicine, as meant by the Act of March 19, 1896. It is equally manifest to us that the legislature, by the use of the words "appliance and agency," did not intend to include such treatment as Hayden gave Carter and Kemp. Our attention has been called to no statement of osteopathic treatment in all the literature upon this subject which characterizes the treatment of an osteopath of

his patient as an appliance or agency. There is an incongruity in such application of such words. Osteopaths themselves do not speak of their manipulation of the nerves, ligaments, bones, and other parts of the human body as being agencies or appliances of any sort or in any sense. In any strict and proper use of such words they cannot be so denominated. If one not an osteopath directs a blow at their art, it is becoming that he use a term of description not to be mistaken. We conclude that the act of March 19, 1896, was not intended to regulate the practice of osteopathy in Mississippi. The course of study and examination prescribed in our law upon this subject seems to make it out as a curriculum of the allopaths. It at least suits them in many respects, but its chemistry and *material medica* are not specially adapted to assist the practice of osteopathy. They make no use of the immense learning contained on these subjects, so highly valued by the regular physician. It appears to us that our legislation upon the subject of the practice of medicine has been framed by the allopaths to suit their views of the medical art, and with the laudable design of excluding from the practice the unskillful and the ignorant; and it was not intended to set up a universal standard of therapeutics, from which none could depart. Courts in other jurisdictions where similar statutes prevail have led

the way for our decision in this case. While our own views of the subject would probably have led us to the conclusion we have reached, yet, if the case had been otherwise, we should have felt ourselves strongly constrained by the authority and reasoning employed by them. We refer to *State v. Liffing*, 61 Ohio St. 39 (55 N. E. 168, 46 L. R. A. 334, 76 Am. St. Rep. 358); *State of Rhode Island v. Mylod*, 40 Atl. 753 (41 L. R. A. 428); *Nelson v. Board* (Ky.), 57 S. W. 501 (50 L. R. A. 383). Alabama, with a statute widely different from ours, holds another view. But *Bragg v. State*, 32 South. 767, sheds no light upon the construction of our statute.

A wise legislature some time in the future will doubtless make suitable regulations for the practice of osteopathy, so as to exclude the ignorant and unskillful practitioners of the art among them. The world needs and may demand that nothing good or wholesome shall be denied from its use and enjoyment.

The judgment below is reversed, the indictment quashed, and the defendant discharged."

We also quote the opinion in full of Judge Hobson, of the Supreme Court of the state of Kentucky, in the case of *Nelson v. State Board of Health*, as reported in 118 Ky., page 770, as follows:

"Appellant, Harry Nelson, a citizen of this state, filed his petition in equity in the court below in which he alleged that, after he had taken a regular course of studies at the American School of Osteopathy at Kirksville, Mo., for a term of years, he became a graduate thereof on September 15, 1897; that since that date he has been practicing this system of healing for his support, to the great comfort and relief of disease and sickness, having adopted it as his vocation in life; that osteopathy is a perfect system, having the approval of skilled and scientific men, and schools and colleges in which its doctrines are taught; that appellee was about to have him arrested for practicing osteopathy, or prosecute him therefor, under the act entitled "An act to protect citizens of this commonwealth from empiricism," approved April 10, 1893, and the amendment thereto approved March 18, 1898; that this act is in violation of the bill of rights, and is unconstitutional, or, if valid, that under it appellee is discriminating against the system of medicine known as "osteopathy," refusing to recognize his diploma, or to give him a certificate; that the school referred to at which he graduated is a reputable medical college chartered by the laws of Missouri, with a large body of learned professors, and a large patronage of pupils, and as such is entitled to be recognized and indorsed by the

appellee. He prayed that appellee be enjoined from molesting him in his business or profession as an osteopath, or pursuing him criminally therefor, and, if he was not entitled to this relief, then that a writ of mandamus be awarded him compelling appellee to recognize and endorse the American College of Osteopathy at Kirksville, Mo., and issue him a certificate entitling him to follow his calling in this state. Appellee answered, denying the allegations of the petition, and pleading specially that the school referred to was not a reputable medical college, and that plaintiff, as a graduate of it, was not entitled to a certificate from it. On final hearing the court below dismissed the action, refusing the complainant any relief, and the correctness of this judgment is the question to be determined on this appeal.

The proof shows that osteopathy is a new method of treating diseases, which is said to have originated with Dr. A. T. Still, of Kirksville, Mo., about the year 1871. He practiced it more or less from that time until about the year 1890, when he opened a school for the instruction of others. In 1892 he obtained an imperfect charter for his school under the laws of Missouri. This was perfected in 1894 by a charter in regular form, under which the school has since been operating. At the time the proof was taken in this case there were in attendance

at the school something over 500 scholars from twenty-nine states of the Union, and several from Canada. In connection with the school was an infirmary, at which from 300 to 500 patients were regularly treated. There were twelve or thirteen professors in the school. Of these four were regularly graduated physicians, besides Dr. Still, who was a surgeon in the army during the Civil War, and is said to have been a college graduate; but the proof as to this is not clear. Another of the professors is a fellow of the Royal Society of England, and still another was for many years the circuit judge of that district. The buildings of the school are shown to be commodious, and suitable for its purposes. While its equipment at first was meager, it has gradually increased from time to time until now it would seem in some respects to compare favorably with other colleges. The patients treated at the infirmary, as well as those treated by appellant, appear to have been satisfied with what they received, and many of them to have been materially benefited. There are four or five other colleges of osteopathy, which, with the one at Kirksville, form an association, and in five states of the Union osteopathy has been recognized by statute. The testimony of the witnesses, the character of the professors, and the evident sincerity of their statements leave no doubt in our

minds that the school at Kirksville is a reputable school of osteopathy; but whether it is a reputable school of medicine, within the meaning of our statute, or what are appellant's rights if it is not, are very different questions, depending upon the proper construction of the act itself. The purpose of the statute, as shown by its title, was to protect the people of this state from empiricism. Its material provisions are as follows (Kentucky Statutes, sections 2611-2618):

"Section 2611. It shall be the duty of the county clerk of each county to purchase a book of suitable size, to be known as the "Medical Register" of the county, and to set apart one full page for the registration of each physician.

"Section 2612. It shall be unlawful for any person to practice medicine in any of its branches, within the limits of this state, who has not exhibited and registered in the county clerk's office of the county in which he resides his authority for so practicing medicine as herein prescribed, together with his age, address, place of birth and the school or system of medicine to which he professes to belong.

"Section 2613. Authority to practice medicine shall be a certificate from the state board of health, and said board shall, upon application, issue a certificate to any reputable physician who is practicing, or who desires to begin the

practice of medicine in this state, who possesses any of the following qualifications:

“(1) A diploma from a reputable medical college legally chartered under the laws of this state. (2) A diploma from a reputable and legally chartered medical college of some other state or country, indorsed as such by the state board of health. (3) Satisfactory evidence from the person claiming the same that such person was reputably and honorably engaged in the practice of medicine in this state prior to February 23, 1864. (4) Satisfactory evidence from any person who was reputably and honorably engaged in the practice of medicine in this state prior to February 23, 1884, who has passed a satisfactory practical examination before said board.

“Section 2616. Nothing in this law shall be so construed as to discriminate against any peculiar school system of medicine, or to prohibit women from practicing midwifery, or to prohibit gratuitous services in case of emergency; nor shall this law apply to commissioned surgeons of the United States army, navy, or marine hospital service, or to legally qualified physicians of another state called to see a particular case or family, but who does not open an office or appoint any place in this state where he or she may meet patients or receive calls.

"Section 2618. Any person living in this state or coming into this state, who shall practice medicine, or attempt to practice medicine in any of its branches, or who shall treat or attempt to treat any sick or afflicted person by any system or method whatsoever, for reward or compensation, without first complying with the provisions of this law, shall, upon conviction thereof, be fined fifty dollars, and upon each and every subsequent conviction shall be fined one hundred dollars and imprisoned thirty days, or either or both, in the discretion of the court or jury trying the case; and in no case where any provision of this law has been violated shall the person so violating be entitled to receive any compensation for the services rendered. To open an office for such purpose or to announce to the public in any way a readiness to treat the sick or afflicted shall be deemed to engage in the practice of medicine within the meaning of this act."

Empiricism is defined as "a practice of medicine founded on mere experience without the aid of science or the knowledge of principles." The above act is therefore "an act to protect the people of this commonwealth from the practice of medicine founded on mere experience, without the aid of science, or knowledge of principles." To secure this, it requires a medical register to be kept by the county clerk of each

county, and makes it unlawful for any person to practice medicine in any of its branches within the limits of the state until he has registered in the county of his residence. Authority to practice medicine under the statute can only be conferred by a certificate from the state board of health issued to a reputable physician having a diploma from a reputable medical college legally chartered under the laws of this state, or, if chartered under the laws of some other state or country, indorsed as such by the state board of health. Persons engaged in the practice reputably and honorably prior to February 23, 1864, are, on proof of this fact, entitled to a certificate, and persons engaged in the practice reputably and honorably prior to February 23, 1884, may be given a certificate after a satisfactory examination before the board; but there is no authority in the act for the board to examine any one who was not engaged in the practice prior to February 23, 1884, or to issue a certificate to such a person, unless he is a reputable physician having a diploma from a reputable college; and without such a certificate it is made unlawful for any person to practice medicine in any of its branches within the limits of this state. The appellant, therefore, having graduated in the year 1897, and not being a practitioner of medicine in this state prior to February 23, 1884, could not be ex-

amined before the board of health, nor was he entitled to a certificate from it unless upon the ground that he held a diploma from a reputable and legally chartered medical college of the state of Missouri. It is contended for the appellee that the law has conferred upon it the sole power to determine whether a particular college is reputable, and should be indorsed as such by it. It is contended for appellant that appellee, by the express terms of the statute, is limited in power, and can not discriminate against any peculiar school or system of medicine. It is urged with force that, if the refusal to indorse the school is essentially based on the system it teaches, rather than on the sufficiency of its instructions, the action of the board is without authority, and may be restrained by the courts.

This seems to us to be the true construction of the statute, and in a case where it was clear from the evidence that a discrimination had been made against a system of medicine we should not hesitate to hold that the board had exceeded its power. But, under the evidence, we are not inclined to think that the school referred to is a reputable medical college, within the meaning of the statute. The terms "physician," "practice medicine," and "medical college," used in the act, have a well-defined popular meaning, and were used, we think, by the

legislature in this sense. The term "physician" refers to those exercising the calling of treating the sick by medical agencies, as commonly practiced throughout the state at the time the act was passed. The term "medical college" refers to those schools of learning teaching medicine in its different branches, at which physicians at that time were educated, or schools of that character organized since. At such an institution an essential part of the instruction was in teaching the nature and effects of medicines, how to compound and administer them, and for what maladies they were to be used. In such institutions also surgery is an essential part of the instruction. Without a knowledge of surgery or medical agencies, no person would be deemed equipped to practice medicine by any medical college; for these things lie at the base of the instruction given in such schools. Osteopathy teaches neither therapeutics, *materia medica*, nor surgery. Bacteriology is also ignored by it. As we understand the record, it relies entirely on manipulation of the body for the cure of diseases. Its theory is that a large number of ailments are due to irregular nerve action, and that by stimulating or repressing the nerve centers by manipulation they enable nature herself to right the evil. It administers no drugs; it uses no knife. It does not profess to cure all diseases. When a case is presented requiring

surgery or medication, the osteopath gives way to the physician. Faith cure or magnetism has no place in the system. It relies wholly upon manipulation aiding the *vis medicatrix naturae*. The main things taught in the school are physiology, anatomy, and the treatment of diseases by manipulation. The system is new, and, of necessity, imperfect as yet, but, if we may credit the evidence in this record, is often efficacious where the regular practice is ineffective. Still a school which teaches neither surgery, bacteriology, *materia medica*, nor therapeutics, can not be regarded as a medical college within the popular meaning of those terms as understood in this state when the act in question was passed.

Having reached the conclusion that the school at which appellant graduated is not a medical college within the meaning of the statute, it remains for us to inquire whether the act applies to him at all. The subject-matter in the minds of the legislature in passing the act was to protect the people of the state from the practice of medicine founded merely on experience without scientific knowledge. To effect this it allows only reputable physicians holding a diploma from a regular or reputable school to practice medicine, with an exception in favor of those then already long engaged in the practice. If the act applies to appellant, he can in no case

practice his system in this state; for, however well qualified he may be, he can not be examined for license as a physician, and he could not, without abandoning his practice as an osteopath, obtain a diploma from a medical college. If the statute applies to him, it also applies to trained nurses, and all others of that class, who, for compensation, administer to the wants of the sick. The result of such a construction of the statute would be to compel every one, whether willing or unwilling, to employ a registered physician to care for him when he is sick, or to trust himself entirely to gratuitous services, however much he might prefer skillful nursing to medical treatment. It is doubtful if the legislature has the right under the Constitution thus to restrict the free choice of the citizen in a matter concerning only himself and not the people at large. Taking the statute as a whole, we do not think that this was within the legislative intent, or that the act was designed to do more than regulate the practice of medicine by physicians and surgeons.

After it was first passed in this state there was a separate statute passed applicable to dentists, and still another for pharmacists: thus showing that the legislature intended the act before us to apply only to physicians. Until these acts were passed there were no requirements established by law for the practice of

medicine in this state, and in undertaking to regulate the practice of medicine it should not be presumed that the legislature intended to interfere with trained nurses or others who, for compensation, attended on the sick without undertaking to prescribe medicine or to follow the calling of a physician; for such persons are not within the spirit of the act, and could not well have been in the mind of the legislature when enacting it. A statute precisely similar to ours in purpose was passed in the state of New York. In *Smith v. Lane*, 24 Hun. 632, a person treating disease like appellant was charged with violating the act. The court held him not within the statute. Among other things the court said: "The practice of medicine is a pursuit very generally known and understood, and so, also, that of surgery. The former includes the application and use of medicines and drugs for the purpose of curing, mitigating or alleviating bodily diseases, while the functions of the latter are limited to manual operations, usually performed by surgical instruments or appliances. It was entirely proper for the legislature, by means of this chapter, to prescribe the qualification of the persons who might be intrusted with the performance of these very important duties. The health and safety of society could be maintained and protected in no other manner. To allow incompetent or unqualified persons to

administer or apply medical agents, or to perform surgical operations, would be highly dangerous to the health as well as the lives of the persons who might be operated upon, and there is reason to believe that lasting and serious injuries, as well as the loss of life, have been produced by the improper use of medical agents and surgical instruments or appliances. It was the purpose and object of the legislature by this act to prevent a continuance of deleterious practice of this nature, and to confine the use of medicines and the operations of surgery to a class of persons who, upon examination, should be found competent and qualified to follow these professional pursuits. No such danger could possibly arise from the treatment to which the plaintiff's occupation was confined.

While it might be no benefit, it could hardly be possible that it could result in harm or injury. * * * His system of practice was rather that of nursing than of either medicine or surgery. * * * He neither gave nor applied drugs or medicines, nor used surgical instruments. He was outside of the limits of both professions, and neither of the schools or societies mentioned in the act had jurisdiction over him." A statute very similar to ours was passed in the state of Ohio, and in *State v. Liffing*, 55 N. E. 168 (46 L. R. A. 334), the question was presented to the Supreme Court

of the state whether an osteopath was included in the statute. It was held that he was not. The court said: "The obvious purpose of the act under consideration is to secure to those who believe in the efficacy of medicines the ministration of educated men, thus preventing fraud and imposition, and to protect society from the evils which result from the administration of potent drugs by the ignorant and unskillful. The purpose of the act is accurately indicated by its title to be "to regulate the practice of medicine." No provision of the act indicates an intention on the part of the legislature that those who do not propose to practice medicine shall graduate from a college of medicine, or otherwise become learned in its use. Without such knowledge no one is entitled to a certificate from the board of examination.

The result of the view urged in support of the exception is that by this act the General Assembly has attempted to determine a question of science, and control the personal conduct of the citizen without regard to his opinion; and this is a matter in which the public is in no wise concerned. Such legislation would be an astonishing denial of the commonly accepted views touching the right to personal opinion and conduct, which does not invade the right of others." A similar ruling was made in Rhode Island. *State v. Mylod*, 40 Atl. 753. While

the phraseology of our statute is in some respects different from that before the court in either of these cases, the purpose of the act is plainly the same, and we think the same construction should be adopted. The thing in the mind of the legislature, and declared by the act to be unlawful, is "for any person to practice medicine in any of its branches within the limits of this state" without a certificate from the state board of health. Section 2612.

And as the board is only authorized to issue a certificate to a reputable physician having a diploma from a reputable medical college, and no discrimination is allowed against any peculiar school or system of medicine, the penalties provided by the last section of the act must be limited to that which is referred to in the title and previous sections,—the practice of medicine in some of its branches in this state; and the words, "who shall practice medicine or attempt to practice medicine in any of its branches or who shall treat or attempt to treat any sick or afflicted person by any system or method whatsoever, for reward or compensation, without first complying with the provisions of this law," must be held to refer to physicians or surgeons belonging to some school or system of medicine practicing or desiring to practice medicine in the state, as provided in the preceding section; otherwise, this section

would be made to include those not provided for in the preceding section, and the effect of the act would be not to protect the people of this state from the unscientific practice of medicine, but to deny to the sick all ministrations not gratuitous, unless by registered physicians. Thus construed, the act would be for the protection rather of the doctors of the state than of the people; and, in view of the general custom before and since this act of hiring nurses and others to care for the sick, we are of the opinion that such a construction would do violence to the actual intention of the legislature. Appellant is in no proper sense a physician or surgeon. He does not practice medicine. He is rather on the plane of a trained nurse. If by kneading and manipulating the body of the patient he can give relief from suffering, we see no reason why he should not be paid for his labor as other laborers. Services in kneading and manipulating the body are no more the practice of medicine than services in bathing a patient to allay his fever or the inflammation of a wound. Appellant may not prescribe or administer medicine or perform surgery, but, so long as he confines himself to osteopathy, kneading and manipulating the body, without the use of medicine or surgical appliances, he violates no law, and appellee should not molest him. On the return of the case the court below

will enter judgment granting appellant a perpetual injunction restraining appellee from interfering with him or prosecuting him for the practice of osteopathy as above indicated. Judgment reversed, and cause remanded for further proceedings not inconsistent with this opinion.

Within the last decade many new methods or arts of drugless healing and curing diseases have sprung into existence, principal among them is perhaps that generally known as Christian Science, a well defined system of drugless healing, upon which there are standard text books defining the system the most potent elements of which are silent prayer and mental suggestion. The rapid growth of Christian Science, numbering its adherents by the millions in this country, gives some evidence of the popularity of that particular school of drugless healing, and, it is safe to add, some intimation of the efficacy of the systems practiced, and it is estimated that there are eleven thousand Christian Science drugless practitioners alone in the state of California.

Next in importance is that school generally known as osteopathy, consisting of a system of rubbing and kneading the body, manipulating the spine, applying hot and cold baths and prescribing diet and exercise for the treatment,

relief and cure of bodily infirmities or diseases without the use of medicine, drugs or surgery.

Next in importance is that system of drugless healing known as the faith cure, involving the exercise of faith, hope, mental suggestion and mental adaptation for the relief and cure of bodily infirmities or diseases without the use of medicine, drugs or surgery. This particular school of drugless practice numbers its followers among the tens of thousands in the state of California.

The other recognized ancient schools of drugless practice are magnetic healing, divine healing and clairvoyant healing. Since these various methods of drugless treatment of diseases or infirmities have gained prominence and strong following, its practice is being universally recognized as a great menace to the regular practitioners of the old school of medicine, supplanting in a large measure the use of drugs, medicines and the knife, and strong efforts have been made to put a stop to it by arresting the practitioner and charging him with practicing medicine without a license, in violation of the statutes requiring physicians and surgeons to procure a license before entering upon the practice of their profession. When such arrests have been made the questions which the courts most generally have been called upon to solve is, first, whether one who practices drugless

healing is engaged in the practice of medicine and surgery within the meaning of such statutes. Second, whether such drugless healing or practice involving mental and spiritual process in the treatment of diseases, without the use of medicine or surgery is in itself innocent and an inoffensive and harmless occupation, and therefore not subject to police regulation. Third, whether the regulation is reasonable.

Upon these questions the great weight of authority under the decisions of the courts of last resort of the various states of the Union at the present time hold in favor of the drugless practice of diseases, especially where the elements of spiritual and mental processes are alone employed in the treatment of diseases as not being subject to police regulation.

However, the Supreme Courts of Ohio, Nebraska, Colorado and Illinois, in interpreting legislative enactments similar to the California medical law, have held that healing by prayer or the practice of Christian Science or any other method of drugless healing was subject to the police regulation, and that its practice without a certificate from the board of medical examiners was in violation of the law.

Thus it has been uniformly held in these states that a statute regulating the practice of medicine and providing that any person shall be regarded as practicing medicine who shall

treat, operate on or prescribe for any physical ailment of another, is constitutional, and that one who practices osteopathy, Christian Science, faith cure, magnetic healing or clairvoyant healing are required to take out a license and to undergo an examination in the various branches of scientific knowledge prescribed by the act, holding that to treat a person for a physical or mental ailment by prayer or by rubbing the affected parts with the hands, is a treatment or operation for a physical ailment and is practicing medicine within the meaning of the act to regulate the practice of medicine.

The medical law of the state of California was largely copied from the medical law now in force in the state of Ohio, and in the interpretation of that law by Judge Summers, of the Supreme Court of the state of Ohio, in the case of *State v. Marble*, 73 N. E., page 1063, it was held as follows: "The right to practice medicine has been so long and so universally subject to state regulation that it might almost be said to be not an absolute right but a privilege or franchise. Assuming, however, that it is an absolute right, it is conceded that it is subject to such reasonable regulations or conditions as the state in the exercise of the police power may prescribe. *France v. The State*, 57 Ohio St. 1, 47 N. E. 1041; *The State of Ohio v. Gardner*,

58 Ohio St. 599, 51 N. E. 136, 41 L. R. A. 689, 65 Am. St. Rep. 785.

The contention of counsel for the defendant is, first, that prescribing, for a fee, Christian Science treatment for the cure of a bodily ailment, is not practicing medicine within the meaning of the statute; second, that Christian Science is a religious belief, and that defendant, in giving the treatment, did so in obedience to a religious and conscientious duty, or, in other words, was worshiping God according to the dictates of his conscience, and that a statute interfering therewith is unconstitutional, as depriving him of his natural and indefeasible right to worship Almighty God according to the dictates of his own conscience; third, that if Christian Science is a school of medicine, the act discriminates against Christian Science, in that it has made provision for the examination of the practitioners of other schools of medicine that are related to other theories of medicine, but that it has made no such provision for the Christian Science practitioner, but, on the contrary, requires him to take the same examination that is prescribed for the so-called regular physician.

It is not necessary to notice the various statutes regulating the practice of medicine that have been passed in this state. The first was passed in 1811, and numerous acts have since

been passed, down to the Act of 1902 involved in the present controversy. Reference is made to them in the briefs of counsel in *State of Ohio v. Gravett*, 65 Ohio St. 289, 62 N. E. 325, 55 L. R. A. 791, 87 Am. St. Rep. 605. It is sufficient for present purposes to say that in 1896 was passed an act, entitled "An act to regulate the practice of medicine in the state of Ohio," which was quite comprehensive. It provided a state board of medical registration and examination, and that no person should practice medicine, surgery, or midwifery, in any of its branches, in this state, without first complying with the requirements of the act. Its requirements were to the effect that a person engaged in the practice must obtain a certificate from the board, upon a showing either that he was a graduate in medicine or surgery, or a legal practitioner under the laws then in force, or upon such examination before the board as to his qualifications as the board might require, and, as to a person practicing midwifery, that she should obtain a certificate from the probate judge of the county in which she resides. So much of the section defining who shall be regarded as a practitioner of medicine and surgery, within the meaning of the act, as is necessary to an understanding of the question determined, is here set out, and as subsequently

amended, the changes being indicated by the words in italics:

"Any person shall be regarded as practicing medicine or surgery within the meaning of this act who shall append the letters *M. D.* or *M. B.* to his name, or, for a fee, prescribe, direct or recommend for the use of any person, any drug or medicine or other agency for the treatment, cure or relief of any wound, fracture or bodily injury, infirmity or disease; provided, however, that nothing in this act shall be construed to prohibit service in case of emergency, or the domestic administration of family remedies." February 27, 1896, 92 Ohio Laws, p. 47.

"Sec. 4403f. Any person shall be regarded as practicing medicine or surgery or midwifery within the meaning of this act, who shall use the words or letters '*Dr.*,' '*Doctor*,' '*Professor*,' '*M. D.*,' '*M. B.*,' or any other title, in connection with his name, which in any way represents him as engaged in the practice of medicine or surgery or midwifery, in any of its branches, or who shall prescribe, or who shall recommend, for a fee, for like use any drug or medicine, appliance, application, operation or treatment, of whatever nature, for the cure or relief of any wound, fracture or bodily injury, infirmity or disease. The use of any of the above mentioned words or letters, or titles in

such connection, and under such circumstances as to induce the belief that the person who uses them is engaged in the practice of medicine or surgery or midwifery in any of its branches, shall be deemed and accepted as *prima facie* proof of an intent on the part of such person to represent himself as engaged in the practice of medicine or surgery or midwifery, provided, however, that nothing in this act shall be construed to prohibit service in the case of emergency, or the domestic administration of family remedies." April 14, 1900, 94 Ohio Laws, 200.

The section as amended April 21, 1902 (95 Ohio Laws, 212), is not changed in the particular part under consideration.

In *State of Ohio v. Liffing*, 61 Ohio St. 39, 55 N. E. 168, 46 L. R. A. 334, 76 Am. St. Rep. 358, it was held that osteopathy was not an "agency" within the meaning of the Act of 1896, and in *State of Ohio v. Gravett*, *supra*, it was held that it was within the meaning of the statute as amended in 1900. In the opinion in the latter case, Shauck, J., referring to the former case, says (pages 306, 307 of 65 Ohio St., page 325 of 62 N. E., 55 L. R. A. 791, 87 Am. St. Rep. 605): "The view then urged by the attorney general was that the system of rubbing or kneading the body known as 'osteopathy' is an 'agency' within the meaning of

the statute; but the interpretation of the statute seemed to invoke the maxim *noscitur a sociis* as an aid in determining the meaning of the work, and our conclusion was that it meant something of like character with a drug or medicine, to be administered with a view to producing effects by virtue of its own potency, and that it therefore did not include osteopathy. * * * It seems quite clear that in its present form the statute affords no proper occasion for the application of the maxim of interpretation by which we were aided in *State v. Liffing, supra*. Careful comparison of the two acts with respect to their definitions of the practice regulated shows that, while in the former the legislature intended to prohibit the administration of drugs by persons not informed as to their effect or potency, by the latter it has attempted a comprehensive regulation of the practice of the healing art, so far, at least, as to require the preparatory education of those who, for compensation, practice it according to any of its theories. The comprehensive language of the statute, and the purpose which it clearly indicates, require the conclusion that osteopathy is within the practice now regulated." The conceded facts are that the defendant did not recommend or prescribe for the cure or relief of Christ Hehl any drug, medicine, appliance, application, or operation, but, on the contrary,

that he made no diagnosis or any physical examination, gave him no directions as to food, diet, exercise or any other directions, nor did he make any inquiry as to the nature of the disease with which he was afflicted. The only thing he did was to offer prayer for his recovery. He was called to see Hehl for rheumatism, but called on him but once, and after that gave him what is, among the followers of Christian Science, known as "absent treatment," for one week, and at the end of that time Hehl paid him \$5 for his services. The defendant did not have a certificate from the state board of medical registration and examination, as required by the statute. It is contended that the word "treatment" is to be given its meaning as used in the practice of medicine, and that, as so read, it means the application of remedies to the curing of disease; that a remedy is a medicine, or application or process; that process is an action or operation; and that prayer for the recovery of the sick is neither. Technically this may be correct, but the science of medicine has made some advance since the time Macbeth wished to throw physic to the dogs because his doctor could not cure a mind diseased, but told him, "Therein the patient must minister to himself." Nowadays doctors cure imaginary diseases by means that would as easily as Christian Science escape the above definition. What

Christian Science is we do not know. The practice of it is referred to as "treatment" by its followers. Mrs. Mary Baker G. Eddy, in "Science and Health," page 410, says: "Always begin your treatment by allaying the fear of patients. Silently reassure the patient as to his exemption from disease and danger. Watch the result of this simple rule of Christian Science, and you will find that it alleviates the symptoms of every disease. If you succeed in wholly removing the fear your patient is healed. The great fact that God wisely governs all, never punishing aught but sin, is your standpoint whence to advance and destroy the human fear of sickness. Plead the case in science and for truth, mentally and silently. You may vary the arguments, to meet the peculiar or general symptoms of the case you treat; but be thoroughly persuaded in your own mind, and you will finally be the winner. You may call the disease by name when you address it mentally; but by naming it audibly, you are liable to impress it upon the thought. The silence of Christian Science and love is eloquent. It is powerful to unclasp the hold of disease, and reduce its cause to nothingness. To prevent disease or to cure it mentally, let spirit destroy this dream of sense. If you wish to heal by argument, find the type of the ailment, get its name, and array your mental plea against the physical.

Argue with the patient (mentally, not audibly) that he has no disease, and conform the argument to the evidence. Mentally insist that health is the everlasting fact and sickness the temporal falsity. Then realize the presence of health, and the corporeal senses will respond. 'So be it!' " If its followers call it treatment, they ought not to be heard to say it is not. Dr. O. W. Holmes, Med. Ess., says: "Disease is to be treated by anything that is proved to cure it." The statute of 1896, as we have seen, had been held by this court not to comprise the practice of osteopathy, and, by a lower court (*Evans v. The State*, 9 Ohio Dec. 222, 6 Ohio N. P. 129), not to apply to Christian Science. So that the use of the words "of whatever nature" in the amendment are quite significant, and we have no doubt the legislative intent was to bring within this definition every person who, for a fee, prescribes or recommends a cure for disease, even though the cure is to come not from himself, but, through his intercedence, from God. In Illinois the legislature, when it enacted, "Any person shall be regarded as practicing medicine, within the meaning of this act, who shall treat or profess to treat, operate on or prescribe for any physical ailment or any physical injury or deformity of another," thought it necessary to exclude Christian Science by providing that nothing in this sec-

tion shall be construed to apply to any person who administers to or treats the sick or suffering by mental or spiritual means, without the use of any drug or material remedy.

The next contention is that the statute interferes with defendant's right to worship God according to the dictates of his conscience. No specific provision of the Constitution is referred to. Section 7 of our Bill of Rights provides: "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, * * * nor shall any interference with the rights of conscience be permitted." It is to be observed that the statute does not prohibit the prescribing or recommending the treatment except for a fee, and we are not advised that it is a part of defendant's religion to exact a fee as well as to pray. But if the inhibition of the statute tends to the public welfare, and is not obnoxious on other grounds, it is not within this provision of the Bill of Rights. In *Bloom v. Richards*, 2 Ohio St. 387, 392, Thurman, J., says: "Acts evil in their nature or dangerous to the public welfare may be forbidden and punished, though sanctioned by one religion and prohibited by another; but this creates no preference whatever, for they would be equally forbidden and punished if all religions permitted them. Thus, no plea of his religion should shield a murderer,

ravisher, or bigamist; for the community would be at the mercy of superstition if such crimes as these could be committed with impunity because sanctioned by some religious delusion." In *Reynolds v. United States*, 98 U. S. 145, 164, 25 L. Ed. 244, after showing historically how religious freedom came to be guaranteed by amendment to the Constitution of the United States, Chief Justice Waite considers what is meant by religious freedom, and concludes: "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order."

This brings us to the question whether the act, in so far as its application to Christian Science is concerned, is a valid exercise of the police power. The term (police power), it has been said, is incapable of exact definition. "It aims directly to secure and promote the public welfare, and it does so by restraint and compulsion." Section 3, "Police Power," Freund. In *Parks v. State*, 159 Ind. 211, 220, 64 N. E. 862, 866, 59 L. R. A. 190, Gillet, L., gives the following list of subjects that have been dealt with under this power: "Under this power various burdens are imposed: Criminals are deprived of their liberty; the implements of crime are destroyed; vice and pauperism are controlled; noxious trades are regulated; nuisances

are suppressed; children are required to attend school; the property of infants and persons *non compos* is placed in the control of others; the construction of buildings in populous neighborhoods is regulated; provision is made for the greater safety of passengers upon railways and steamboats; employers are required to provide safe places in which the work of their employes is to be performed; the hours of work, in employments deleterious to the health, limited; the employment of children in factories prohibited; pure food laws are enacted; physicians, dentists and druggists are licensed; and so the list might be almost indefinitely extended by specific instances of authorized legislative regulations enforcing the social compact for the protection of life, health, morals, property and the general weal of the community, until we perceive that definition is impossible, and that the whole matter of the legislative sovereignty, as opposed to individual liberty, must, in the absence of other constitutional restriction, be left, as the federal Supreme Court has declared, to the gradual processes of judicial inclusion and exclusion, as the cases presented for decision require." The earlier decisions were to the effect that the only question for judicial consideration was whether a condition for legislation existed; if it did, the matter was entirely within the discretion of the legislature. A resort to the polls

was the only road to relief from abuse or mistake. *Munn v. Illinois*, 94 U. S. 113, 24 L. Ed. 77. But the later cases are that the power is subject to express state constitutional limitations, and to the inhibition of the Fourteenth Amendment to the Constitution of the United States against any state to deprive any person of life, liberty or property without due process of law, and to deny to any person within its jurisdiction the equal protection of the laws, and to the implied limitation that every exercise of the power must be reasonable. *Police Powers*, Freund, section 63; *Rideout v. Knox*, 148 Mass. 368, 19 N. E. 390, 2 L. R. A. 81, 12 Am. St. Rep. 560; *Lawton v. Steele*, 152 U. S. 133, 14 Sup. Ct. 499, 38 L. Ed. 385; *Plessy v. Ferguson*, 163 U. S. 537, 16 Sup. Ct. 1138, 51 L. Ed. 256; *Wisconsin M. & P. R. R. Co. v. Jacobson*, 179 U. S. 287, 21 Sup. Ct. 115, 45 L. Ed. 194, and *Dobbins v. Los Angeles*, 195 U. S. 223, 25 Sup. Ct. 18, 49 L. Ed. That the practice of medicine may be regulated by legislation has been decided in every court in which the question has arisen. In the leading case, *Dent v. West Virginia*, 129 U. S. 114, 122, 9 Sup. Ct. 231, 233, 32 L. Ed. 623, Mr. Justice Field says: "The power of the state to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure, or tend to secure, them against the

consequences of ignorance and incapacity, as well as of deception and fraud. As one means to this end it has been the practice of different states from time immemorial to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred upon a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. The nature and extent of the qualifications required must depend primarily upon the judgment of the state as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation. Few professions require more careful preparation by one who seeks to enter it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend, and requires not only a knowledge of the properties of vegetable and

mineral substances, but of the human body in all its complicated parts, and their relation to each other, as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Every one may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the state to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified." And again: "We perceive nothing in the statute which indicates an intention of the legislature to deprive one of any of his rights. No one has a right to practice medicine without having the necessary qualifications of learning and skill; and the statute only requires that whoever assumes, by offering to the community his services as a physician, that he possesses such learning and skill, shall present evidence of it by a certificate or license from a body designated by the state as competent to judge of his qualifications."

But it is said the offering of prayer to God for the recovery of the sick or the curing by faith and mental suggestion in no sense affects public safety or public welfare. Admitted. But is that a correct statement of the case? If the defendant prayed for the recovery of Hehl, that was the treatment he gave him for the cure of his rheumatism, and for which Hehl paid him. He was practicing healing or curing disease. To assume that legislation may be directed only against the administering of drugs or the use of the knife is to take a too narrow view. The subject of the legislation is not medicine and surgery; it is the public health, or the practice of healing. The state might make it an offense, as has been done in New York (*People v. Pierson*, 176 N. Y. 201, 68 N. E. 243, 63 L. R. A. 187, 98 Am. St. Rep. 666), for any one to omit to furnish medical attendance to those dependent upon him, and at the same time leave him at liberty to die in any manner he may choose. But this is not all. While the state may not deem it wise to go to the extent of requiring the individual to avail himself of the services of a physician, yet it may not wish to hasten his death, and so to transfer to itself the burden of supporting those dependent upon him, by making it possible for him to employ an empiric. Again, where there is an infectious or

contagious disease, the public welfare may be vitally affected by a failure promptly to recognize it, and so the state is interested in permitting to practice the art of healing only those possessing recognized qualifications. So that, regarding disease, rather than the treatment of it, as the subject of the legislation, it is not necessary that the statute be preventative of particular practices, but it may make the right to undertake the treatment of disease dependent upon the possession of reasonable qualifications.

It is next contended: "That Christian Science is a recognized system or school of healing, and that the statute is unconstitutional, on the ground that it discriminates against Christian Science, or in favor of certain schools of medicine—that different requirements are made of those who use drugs or medicines, of surgeons, and of osteopaths, who use no medicines or drugs, but that the Christian Scientist who uses nothing must take the same examination as the regular practitioner; in other words, must understand the use of drugs and medicines, none of which, according to his system, does he ever use. That under the statute the osteopath is given a certificate to practice the healing art according to his system of treatment, without passing an examination before the state board in the subjects of pathology, chemistry and therapeutics, the principles and practice of med-

icine and surgery. That Christian Science entirely excluded drugs and all material methods of treatment, and relies solely upon prayer as a means for the relief or cure of the sick. Upon what possible theory of justice and equality can the Christian Scientist be required to pass an examination in a half dozen different subjects, which are not required of the osteopath, when these subjects have no relation to the practice of Christian Science, and are even further removed from that method of the healing art than they are from the practice of osteopathy? Neither the law nor the rules of the board of medical registration and examination contain any provisions for ascertaining the attainments of the Christian Scientist who might apply for a certificate to practice his system of healing. The record shows that there is no member of the board qualified to examine a Christian Scientist, and no committee or other means for examination has been provided." If we are correct in the conclusion that disease, and not the method of its treatment, is the subject of the legislation, then it is putting the cart before the horse to say that every school of healing must be recognized. That the legislature in its wisdom might prescribe a uniform examination we do not doubt, and that it may recognize one school, without recognizing all, is also true, if the recognition be in the exercise of proper

classification and for the public welfare, and not with the view to create a monopoly in the schools recognized, or a discrimination against other schools. *Parks v. The State*, 159 Ind. 211, 64 N. E. 862, 59 L. R. A. 190; *The State ex rel. Kellog v. Currens et al.*, 111 Wis. 431, 87 N. W. 561, 56 L. R. A. 252; *Scholle v. State*, 90 Md. 729, 46 Atl. 326, 50 L. R. A. 411. The act under consideration in *State of Ohio v. Gravett*, *supra*, was held void as discriminating against osteopaths, because, in order to obtain a certificate to practice, limited so that they might not prescribe drugs or perform surgery, they were required a longer period of study than was required of those for unlimited certificates. The present act, or sections 4403c (94 Ohio Laws, 198) and 4403f (95 Ohio Laws, 212), make no such discrimination. It provides that no person shall practice medicine and surgery or midwifery without first complying with the requirements of the act. Then it exempts persons entitled to practice at the time the act is to take effect, prescribes what evidence of general learning the applicant shall present as a condition to his being admitted to the examination, and then provides that each applicant shall be examined in certain specified subjects, and that he shall be examined in the *materia medica*, and therapeutics and the principles and practice of medicine, of the school

of medicine in which he desires to practice, by the member or members of the board representing such school, and, if he passes an examination satisfactory to the board, it shall, upon payment of the prescribed fee, issue to him a certificate, which, when left with the probate judge for record, shall be conclusive evidence that its holder is entitled to practice medicine or surgery in this state. It further provides: "That nothing in this act shall be construed to prohibit services in a case of emergency and the domestic administration of family remedies; and this act shall not apply to any commissioned medical officer of the United States army, navy or marine hospital service, in the discharge of his professional duties, nor to any legally qualified dentist when engaged exclusively in the practice of dentistry," nor to any physician or surgeon who is a legal practitioner in another state, nor to any osteopath who shall pass an examination in certain subjects, and then provides for the appointment of a committee to examine applicants to practice osteopathy, and prescribes the qualifications for admission. We fail to find anything in the act that discriminates against Christian Science. It does not provide for a special examination and limited certificate for the Christian Science practitioner, but he may obtain a certificate to practice medicine upon the same conditions as any other per-

son, and there is nothing in the act requiring him to use the knowledge after he acquires it.

In response to an inquiry from the bench as to what, respecting the theory of medicine, a Christian Scientist could be examined, counsel suggested that he might be examined as to his ability to pray. But silent treatment is recommended as likely to be more efficacious. To admit that a practitioner may determine what treatment he will give for the cure of disease, and that the state may examine him only respecting such treatment, would be to defeat the purpose of the statute and to make effective legislation of this character impossible. If the recent statute is too comprehensive, the remedy is with the legislature.

The conclusion reached is supported by *State of Nebraska v. Buswell*, 40 Neb. 158, 58 N. W. 728, 24 L. R. A. 68, and the following recent decisions throw more or less light upon such legislation: *The People v. Blue Mountain Joe*, 129 Ill. 370, 21 N. E. 923; *Williams v. The People*, 121 Ill. 84, 11 N. E. 881; *The People v. Gordon*, 194 Ill. 560, 62 N. E. 858, 88 Am. St. Rep. 165; *Bragg v. The State*, 134 Ala. 165, 32 South. 767, 5 L. R. A. 925; *The State of Iowa v. Bair*, 112 Iowa 466, 84 N. W. 532, 51 L. R. A. 776; *The State of Kansas v. Wilcox*, 64 Kan. 789, 68 Pac. 634; *Meffert v. Med-*

ical Board, 66 Kan. 711, 72 Pac. 247; State of Maine v. Bohemier, 96 Me. 257, 52 Atl. 643; People v. Reetz, 127 Mich. 87, 86 N. W. 396; State v. Biggs, 133 N. C. 729, 46 S. E. 401, 64 L. R. A. 139, 98 Am. St. Rep. 731, monographic note; State v. Heath (Iowa), 101 N. W. 429.

The exceptions are sustained."

To be a valid police regulation it must be reasonable, necessary and adapted to the use for which it was enacted.

Mungler v. Kansas, 123 U. S. 623;

Minnesota v. Barber, 136 U. S. 313;

In re Jacobs, 98th N. Y. 98;

Jamison v. Indiana Natl. Gas & Oil Company, 128 Ind. 583;

State v. Gerhardt, 145 Ind. 439;

Ritchie v. People, 155 Ill. 98;

Chenoweth v. State Board of Medical Examiner, 141 Pac. 132.

Is the police regulation reasonable which requires the drugless practitioner who employs only faith, hope, mental suggestion and mental adaptation in his practice to be able to pass a satisfactory examination on anatomy, histology, elementary chemistry, toxicology, physiology, elementary bacteriology, hygiene, pathology, diagnosis, gynecology, obstetrics, manipulative and mechanical therapy.

Before an act can be considered a valid police regulation there must be some apparent danger to the public, and the remedy must be the means of eradicating the evil or avoiding the danger.

Lesch v. Koehler, 144 Ind. 278.

An apparent danger is one which may be seen or comprehended by the senses.

Carrol v. Natl. Accident Society, 139 Ia. 36, 130 Amer. St. Reports 294.

“Apparent” means clear or manifest to the understanding, plain, evident, obvious, known, palpable and indubitable.

M. K. & T. Ry. v. Reynolds, 115 S. W. 340.

Hence it has been held the police power of the state extends only to such measures as are reasonable, and the general rule is that all police regulations must be reasonable under all circumstances, in every case it must appear that the regulations adopted are reasonably necessary and appropriate for the accomplishment of a legitimate object. A statute to be within this power must be reasonable in its equal operation upon the persons whom it affects and not unduly oppressive. The validity of a police regulation, therefore, primarily depends on whether, under all the existing circumstances, the regulation is reasonable or arbitrary and whether it is really

designed to accomplish the purpose properly coming within the scope of the police power. In order to sustain the legislative interference by virtue of the police power, under a statute of a state, it is necessary that the act should have some reasonable relation to the subjects included in such power, and the law must tend in a degree that is perceptible and clear toward the preservation of the public welfare, or toward the prevention of some offense or manifest evil, or to the furtherance of some object within the scope of police power. The mere assertion by the legislature that a statute relates to the public health, safety or welfare does not in itself bring that statute within the police power of a state, for there must be obvious and real connection between the actual provisions of a police regulation and its avowed purpose, and the regulation adopted must be reasonably adapted to accomplish the end sought to be attained. A constitutional right cannot be abridged by the legislature under the guise of police regulation, since the legislature has no power under the guise of a police regulation to invade arbitrarily the personal rights and personal liberty of the individual citizen or arbitrarily to interfere with his business or profession, or to impose unusual and unnecessary restrictions on lawful occupations or to invade property rights.

What apparent danger to the health, morals and welfare of the public could have existed that made it reasonable and necessary for the legislature of the state of California to invoke the police powers of the state to deny the drugless practitioner the right to administer to his patient such relief and comfort as he could by the exercise of his spiritual and mental forces, to-wit, faith, hope, mental suggestion and mental adaptation?

If the drugless practitioner who employs prayer in his method was inoffensive and not a menace to the public health, morals and welfare of the community, and was therefore relieved from the operation of the law, why was it necessary to invoke the police power of the state against the drugless practitioner who employed faith and hope in administering to his patients and to require of him the full performance of the drastic regulations provided by the statute. Through what superior discriminating vision was the legislature enabled to distinguish between healing by prayer and healing by faith, and to make the law unequal in its enforcement, against this plaintiff and all other schools of drugless healing which is in contravention of the rights of the plaintiff herein under the Fourteenth Amendment of the federal Constitution and therefore unconstitutional and void.

Police regulations cannot arbitrarily interfere with the enjoyment of the rights of property or the personal rights guaranteed by the Fourteenth Amendment of the federal Constitution, and where a business or profession in itself is harmless and legitimate, the power of the state to regulate it is not the equivalent of the power to destroy. All statutory restrictions are imposed upon the theory that they are necessary for the safety, health or comfort of the public, accordingly, if a restriction or regulation is without reason or necessity it cannot be enforced. Police regulation which impairs or destroys rather than preserves and promotes is within the condemnation of constitutional guarantee. It has been said that the scope of the term "reasonable" as regards any regulation must be measured, having regard to the fundamental principles of human liberty as understood at the time of the formation of the Constitution, adapting the same to modern conditions and the measure of the reasonableness of a police regulation is not necessarily what is best but what is appropriate to the purpose under all the circumstances, and whether or not it is in fact a *bona fide* exercise of the reasonable discretion of the legislative department of the government and is not intended to affect some private or questionable purpose. It is also said that in proportion to the severity or extent

of the police regulation must a strict observance of the constitutional limitations upon the police power be required, and if a statute invades the rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the Constitution.

The concession is freely made that the legislature had the right to lawfully classify the subject of its laws and make provisions applicable to one class of subjects that have no application to another class, but such classification can not be made arbitrarily without just or sound reason for the difference in the burdens imposed and the privileges conferred.

In the face of the constitutional prohibition of unequal laws there are three indispensable conditions to a constitutional imposition of liabilities or burdens upon, or a constitutional grant of rights or privileges to the members of one class that other members of the state do not bear or enjoy.

1st. There must be such a difference between the situation and circumstances of all the members of the class, and the situation and circumstances of other members of the state in relation to the subjects of the discriminatory legislation as presents a just and natural reason of necessity or propriety for the difference made by the law in their liabilities and rights. While reasonable classification is permitted without

doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification.

2nd. No person who does not belong to the class may be included therein, and all persons within the influence of the legislation relative to the class must be treated alike thereby.

3rd. All who are in a situation and circumstances relative to the subject of the discriminatory legislation indistinguishable from the situation and circumstances of the members of the class must be brought under the influence of the legislation and treated by it in the same way as are the members of the class.

An act of class legislation to stand in the face of the Constitution must be based upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which such classification is imposed.

In applying these three rules to the law complained of is the act of the legislature which relieves the Christian Science drugless practitioner and all others who employ the religious ceremony of prayer in the drugless treatment of

disease from the operation of the law and which prohibits the employment of every other religious rite, form or ceremony in the drugless treatment of diseases a legal classification based upon a just and natural reason of necessity or propriety.

The Supreme Court of the state of California, in holding the law in question constitutional, in the opinion rendered by that court in the case of *The People of the State of California v. George W. Jordan*, uses the following language:

“The objection that those who profess to treat bodily afflictions by prayer are not required to be proficient in diagnosis, and the bare exemption under the law is the extension of a favor to them which is withheld from others, is met by the obvious answer that diagnosis is no part of such treatment. Those who believe that divine power may be invoked by prayer for the healing of the body believe also that God is all powerful. Patients receiving their ministration know this, and therefore no fraud or injury may be practiced upon such persons by reason of any lack of skill by the healers in determining the nature of the disease to be treated.”

Healing by prayer and mental suggestion as practiced by the Christian Science healer is the employment of religious rites and ceremonies in the drugless treatment of disease and is in the same class with the drugless practitioner

who employs the religious rites and ceremonies of faith, hope and mental suggestion in the treatment of disease, and if the legislature of the state of California was justified in exempting the drugless practitioner by prayer from the operation of the law because a diagnosis in treatment by prayer is not necessary, for the same reasons the drugless practitioner who employs faith in almighty God, hope and mental suggestion, and mental adaptation in the treatment of disease, should likewise be exempt from the operation of the law.

We maintain that the legislature of the state of California did not have the power under the guise of a police regulation to distinguish between the different religious forms, rites and ceremonies employed by the different religious sects in the drugless treatment of disease.

The legislature of the state of California did not have the power under the guise of a police regulation to determine the particular religious form or ceremony which shall be employed in the drugless treatment of disease. To hold that the legislature had the power to limit the drugless treatment of disease to that class of practitioners who only employ prayer, would be to create a state system of drugless healing and forbidding the exercise of all other religious rites, forms or ceremonies, which would be as

foreign to our system of government as a state church for the cure of souls.

The Medical Law of the state of California admits the Christian Scientist to practice, to cure diseases without examination or certificate of registration because they employ prayer and mental suggestion in their practice. By what process of reasoning can the drugless practitioner who employs faith, hope and mental suggestion be excluded?

All systems of drugless healing are equal before the law. We have no orthodox system of drugless healing of disease by the employment of any particular religious rite or ceremony, and it is distinctively repugnant to the spirit of our Constitution and laws to attempt to establish such an orthodox system.

The only elements employed by the Master in the drugless treatment of disease while upon this earth were faith and mental suggestion when he healed the centurian servant, as reported in 8th chapter of Matthew, 10th and 13th verses, "When Jesus heard it he marveled and said to them that followed, 'Verily I say to you, I have not found so great faith, no, not in Israel,' and Jesus said unto the centurian, 'Go thy way, and as thou hast believed, so be it done unto thee,' and his servant was healed in the self-same hour." Again, when the Master healed the woman who had an issue of blood for twelve

years, as reported in the 9th chapter of Matthew, 22nd verse, "Jesus turned him about, and when he saw her he said, 'Daughter, be of good comfort, thy faith hath made thee whole,' and the woman was made whole from that hour." Again, when the Master restored the sight to the blind men, as reported in the 9th chapter of Matthew, 28th and 29th verses, "Jesus said unto them, 'Believe ye that I am able to do this?' They said unto him, 'Yea, Lord.' Then touched He their eyes, saying, 'According to your faith be it unto you.'" Again, when the Master healed the daughter of the woman of Canaan, as reported in the 15th chapter of Matthew, 28th verse, "Then Jesus answered and said unto her, 'Oh, woman, great is thy faith, be it unto thee, even as thou wilt,' and the daughter was made whole unto that very hour." Again, Christ taught his disciples that faith should be the one potent element employed in their drugless practice of healing disease, as reported in the 17th chapter of Matthew, 20th verse, "And Jesus said unto them, 'Verily, verily, I say unto you, if ye have faith as a grain of mustard seed, ye shall say unto this mountain, remove hence to yonder place and it shall move, and nothing shall be impossible unto you.'" Prayer was never employed by the Master in one single instance in the treatment of disease, and if an orthodox system for the drugless treatment of disease is

to be recognized and established by the state to the exclusion of all other systems employing religious rites or ceremonies the faith cure is entitled to that distinction.

The power to heal is of the spirit as explained in the 1st Cor., 12th chapter, 7-11 verses, "But the manifestation of the spirit is given to every man to profit will all. For to one is given by the spirit the word of wisdom; to another the word of knowledge by the same spirit; to another faith by the same spirit; to another the gift of healing; to another the working of miracles; to another prophecy; to another discernment of spirits; to another divers kinds of tongues; to another the interpretation of tongues. But all these things worketh that one and the self-same spirit dividing to every man severally as he will."

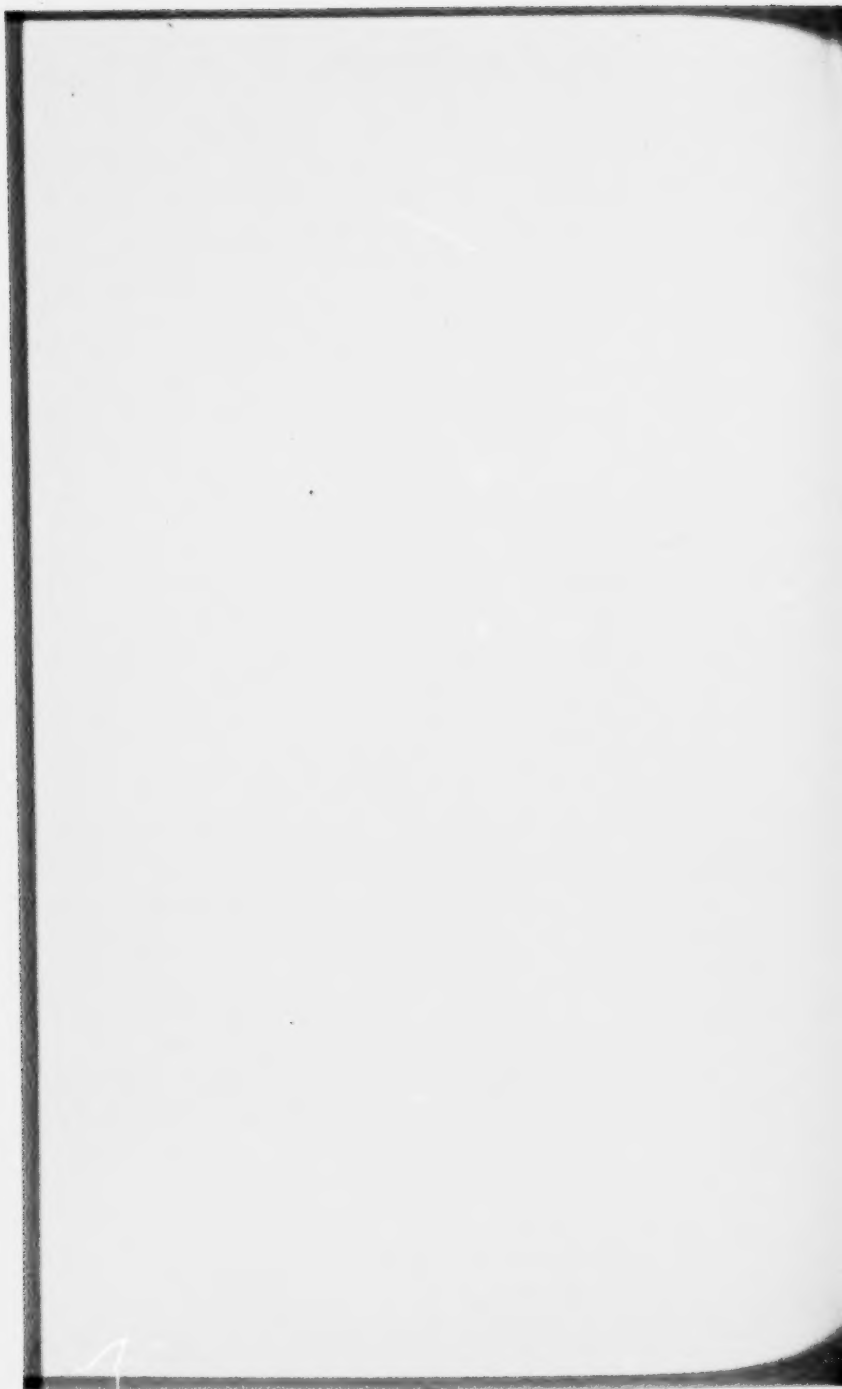
It is our contention that the legislature of the state of California did not have the power under the guise of a police regulation to regulate the practice of religious rites and ceremonies and mental therapeutics in the treatment of disease. These matters lie within the domain of the supernatural. Practical legislation has nothing to do with them. If they are a part of a man's faith the right to their employment cannot be abridged or taken away by legislation.

We maintain as a proposition absolutely sound and unassailable that the provisions of the act

applying to the class denominated drugless practitioners is special, highly discriminatory and void because the act in question expressly provides that the provisions of the act shall not be construed to regulate or to apply to any kind of treatment by prayer. Thus arbitrarily discriminating against every other religious rite and ceremony in the drugless treatment of disease, thereby creating a monopoly favored by law in the practice of drugless treatment of disease by prayer and arbitrarily excluding and prohibiting the exercise of every other religious rite, form or ceremony. That under the terms of the said act the complainant is denied the equal protection of the law in contravention of his rights under the Fourteenth Amendment to the Constitution of the United States, and it is, therefore, unconstitutional and void.

TOM L. JOHNSTON,

Attorney for Appellant.



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No. -----

IN THE
Supreme Court of the United States

October Term, 1916.

No. 493.

P. L. CRANE,

Appellant,

vs.

HIRAM W. JOHNSON, GOVERNOR OF THE
STATE OF CALIFORNIA, U. S. WEBB, AT-
TORNEY GENERAL OF THE STATE OF CALI-
FORNIA, THOMAS LEE WOOLWINE,
DISTRICT ATTORNEY OF LOS ANGELES
COUNTY, CALIFORNIA,

Appellees.

BRIEF ON BEHALF OF APPELLEES.

STATEMENT OF THE CASE.

The appellant brought his bill of complaint in equity in the District Court of the United States for the Southern District of California seeking relief by injunction against the appellees from enforcing certain legislation enacted into law in the state of California.

The first act complained of appears in the bill of complaint (transcript of record, p. 4 et seq.): "An act to regulate the examination of applicants for license, and the practice of those licensed, to treat diseases, injuries, deformities, or other physical or mental conditions of human beings; to establish a board of medical examiners, to provide for their appointment and prescribe their powers and duties, and to repeal an act entitled, 'An act for the regulation of the practice of medicine and surgery, osteopathy, and other systems or modes of treating the sick or afflicted, in the state of California, and for the appointment of a board of medical examiners in the matter of said regulation,' approved March 14, 1907, and acts amendatory thereof, and also to repeal all other acts and parts of acts in conflict with this act."

The second act is also pleaded in full, the title being (transcript of records, p. 19 et seq.): "An act to amend an act entitled 'An act to regulate the examination of applicants for license, and the practice of those licensed, to treat diseases, injuries, deformities, or other physical or mental conditions of human beings; to establish a board of medical examiners, to provide for their appointment and prescribe their powers and duties, and to repeal an act entitled, "An act for the regulation of the practice of medicine and surgery, osteopathy, and other systems and modes of treating the sick and afflicted, in the state of California, and for the appointment of board of medical examiners in the matter of said regulation," approved March 14, 1907, and acts amendatory thereof,

and also to repeal all other acts and parts of acts in conflict with this act,' approved June 2, 1913, by amending sections two, three, four, five, eight, nine, ten, eleven, twelve, thirteen, fourteen, seventeen and eighteen, and adding a new section thereto to be numbered twelve and one-half, relating to the practice of chiropody." (Approved April 24, 1915. In effect Aug. 8, 1915.)

Appellant sought an interlocutory injunction against the appellees and a temporary restraining order pending the hearing and determination of the application for an interlocutory injunction.

The proceedings were had pursuant to the provisions of section 266 of the Judicial Code and before Honorable Erskine M. Ross, a Circuit Judge of the United States, and Honorable Oscar A. Trippet, and Honorable E. E. Cushman, District Judges of the United States. (Transcript of record, pp. 50, 51.)

The appellees first interposed an oral challenge to the jurisdiction of the court to entertain the bill.

This was denied by the court upon the authority of

Raich vs. Truax, 219 Fed. 273, 283;

Truax and others vs. Mike Raich (Advance Sheets, Supreme Court, Nov. 1, 1915). (See transcript of record, p. 51.)

The court held that the granting of the order sought rested in the sound discretion of the court, and, upon the averments of the bill, that the application should be denied. (Transcript of record, p. 51, fol. 89.)

Moreover, the court declined to decide the merits of the case, whereupon appellant pursuant to the provisions of section 266 of the Judicial Code appealed to this court.

**THE COURT PROPERLY DENIED THE RESTRAINING
ORDER.**

A court of equity has no jurisdiction to entertain the bill filed by complainant or to restrain defendant officers from instituting or prosecuting criminal proceedings in the state courts.

It is a fundamental and an elementary principle of equity jurisprudence that a party may not invoke the aid of a court of equity where he has an adequate remedy in a court of law.

This principle is declared in section 267 of the Judicial Code.

Does the bill in the case at bar make it appear that the complainant has not an adequate remedy at law? Nothing is alleged from which it is made to appear that complainant will suffer any great or irreparable injury while his rights are being determined in a court of law. If the statute is unconstitutional because discriminatory and otherwise in violation of the fourteenth amendment, a court of law will so declare.

The rule is general that equity has no jurisdiction to enjoin a prosecution for a criminal offense in a court of law.

1 Joyce Injunctions, Sec. 58-60a;
Ex parte Sawyer, 124 U. S. 200;
Fitts vs. McGee, 172 U. S. 516;

Bosley vs. McLaughlin, 236 U. S. 385;
Arbuckel vs. Blackburn, 113 Fed. 616;
Davis & Farnum Mfg. Co. vs. City of Los Angeles, 189 U. S. 207;
Davis & Farnum Mfg. Co. vs. City of Los Angeles, 115 Fed. 537;
Logan & Bryan vs. Postal Telegraph Co., 157 Fed. 570;
Sullivan vs. San Francisco Gas and Elec. Co., 148 Cal. 368;
Brown vs. Mayor, etc. of Birmingham, 140 Ala. 590;
City of Denver vs. Beede, 25 Colo. 172; 54 Pac. 624;
Crichton vs. Dahmer, 70 Miss. 602;
Wallack vs. Society, 67 N. Y. 23.

The principle for which we contend is well stated in *Little vs. Tacoma*, see 225 Fed. 202; also *Ex parte Sawyer*, 124 U. S. 200, in which the following language is used:

"The modern decisions in England, by eminent equity judges, concur in holding that a court of chancery has no power to restrain criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there. [Citing cases.]

"Mr. Justice Story, in his Commentaries on Equity Jurisprudence, affirms the same doctrine. Story, Eq. Jur. No. 893. And in the American courts, so far as we are informed, it has been strictly and uniformly upheld, and has been applied alike whether the prosecutions or arrests sought to be restrained arose under statutes of the state or under municipal ordinances."

Ex parte Sawyer, supra, has never been overruled and is regarded as the leading case on the subject.

The opinion of the court in *Davis & Farnum Mfg. Co. vs. City of Los Angeles*, 115 Fed. 537, and the reasoning and authorities upon which Judge Wellborn bases his conclusion are that "a court of equity is without jurisdiction to enjoin criminal prosecutions under a statute or ordinance alleged to be unconstitutional and void, even though it is also alleged that it is the purpose of such prosecutions to injure complainant in his property rights, and that such will be their effect."

This decision was affirmed by the United States Supreme Court. (See 189 U. S. 207.) We do not contend, however, that the United States Supreme Court in later decisions has applied the rule against enjoining criminal prosecutions as strictly as it was applied in the above mentioned cases. (See *Dobbins vs. City of Los Angeles*, 195 U. S. 223). The cases in the Supreme Court of the United States are reviewed in *Logan & Bryan vs. Postal Telegraph Co.*, 157 Fed. 570, where it is shown that *Dobbins vs. City of Los Angeles, supra*, was an extreme case in its facts and exceptional in its holdings, by reason of the peculiar facts involved.

In

Sullivan vs. San Francisco Gas, etc., 148 Cal. 371,

it is said:

"Courts of equity will in proper cases enjoin the attempt to enforce a law or ordinance making

certain acts a criminal offense and imposing a punishment therefor, where the law or ordinance is invalid and its enforcement will injure or destroy the plaintiff's property or property rights. * * * Some of the decisions even go so far as to hold that injunction will lie where the enforcement of the invalid law does not directly affect property or rights thereto, but operates upon the plaintiff's business, and thereby causes him material and irreparable loss. [Citing cases.] But upon this latter point there is a conflict, and the weight of authority and reason seems to be to the contrary." [Citing cases.]

Two interesting and exceedingly instructive cases dealing with this matter are *Brown vs. Mayor, etc., of Birmingham*, 140 Ala. 590, and *Denver vs. Beede*, 25 Colo. 172.

In *Brown vs. Mayor, supra*, it is pointed out:

"No *right of property* is threatened by the proposed prosecutions directly or indirectly. Assuming (without at all considering the question) the invalidity of the ordinance, the utmost that will be involved in the prosecution and arrest of complainant under them will be no more than trespass to his person, and courts of equity are without power to enjoin threatened trespasses upon the person [citing cases], and this though such trespass would infringe upon his constitutional rights, life, liberty and pursuit of happiness." [Italics the courts.]

In *City of Denver vs. Beede, supra*, the court makes this exceedingly pertinent observation:

“The fallacy of granting a writ of injunction in cases of this character on the facts detailed by appellee in his bill, is quite evident. If the question of the validity of the ordinance was before us, for determination, and we should decide in favor of its legality, yet notwithstanding appellee admits its violation, no judgment could be pronounced or directed against him therefor in this case, and hence the necessity of applying the rule strictly, that equity will not interfere with the prosecution of actions at law, except in cases where the applicant for such relief brings himself clearly within its purview. The object of ordinances, imposing penalties for specific acts, is to protect and preserve the peace and good order of the corporate community, as criminal proceedings are intended for the preservation of the peace and dignity of the state; and if every offender against such ordinances could invoke the interposition of a court of equity against their enforcement, by charging illegality, or by multiplying his offenses, municipal authorities would be paralyzed in discharging the public duties intrusted to them.

“This is clearly an attempt to extend the writ of injunction beyond its scope and intent, and through this process, prevent the city from invoking the aid of competent tribunals to enforce this ordinance in the usual way, which, if permitted on the showing made, would be an abuse of that writ regarding which Chancellor Kent in *Attorney General vs. Utica Ins. Co.*, 2 Johns.

Ch. 371, has aptly said: 'Nor ought the process of injunction to be applied but with the utmost caution. It is the strong arm of the court; and to render its operation benign and useful it must be exercised with great discretion and when necessity requires it.' "

As a practical matter the complainant has an adequate remedy at law. If he is convicted under a statute which he regards as unconstitutional, he may test the matter upon a writ of habeas corpus or by taking out a writ of error to the Supreme Court of the United States. (*Fitts vs. McGhee*, 172 U. S. 516.) But it is not alleged that any great or irreparable injury will accrue to him, nor will any such detriment accrue if this writ of injunction is denied. The only thing which in the ordinary course of events could result would be his arrest, providing he persisted in practicing his calling in defiance of the statute. His release upon bail would doubtless follow pending the determination of the legality of the law, which matter would be presented in his defense. It is not alleged that there is any intention of multiplying prosecutions pending the determination of the constitutionality of the law, but even were such fact alleged, it would not operate to lend equity to the bill.

"The averment that repeated and numerous prosecutions are threatened is not a sesame to open the gates of equity and injunctive jurisdiction to the complainant; on the idea of preventing a multiplicity of suits. Repeated prosecutions will be consequent only upon repeated in-

fractions by the complainant of the ordinance, all of which he can, of course, forestall and avoid by simply desisting from the alleged criminal acts pending the first prosecution."

Brown vs. Mayor, supra.

See also,

Fitts vs. McGhee, 172 U. S. 516.

Moreover, there is little room for argument that the statute in question is unconstitutional. (See *Collins vs. Texas*, 223 U. S. 288; *Dent vs. W. Va.*, 129 U. S. 114.)

The act has recently been upheld by the Supreme Court of the state of California, in *People vs. Jordan* (Cal. Dec. Vol. 51, p. 435).

THIS COURT CAN NOT INQUIRE INTO THE CONSTITUTIONALITY OF THE ACT ON THIS APPEAL.

The only question before this court in this appeal is, did the trial court err in denying appellant's application for a temporary injunction herein. The merits of the case were not considered in the trial court and therefore can not be considered here. In support of this contention we cite *Ex parte Metropolitan Water Company*, 220 United States Reports, 539, where in a proceeding under section 266 of the Judicial Code, almost identical with the case at bar, it was held:

"While these considerations dispose of the case we briefly advert to an insistence made in argument that we should now take jurisdiction

of the merits of the case as made in the circuit court and determine whether or not the bill stated a case entitling to relief. Not being vested with original jurisdiction to pass upon the question of the validity of the Kansas statute and the petitioner being entitled as of right to have the controversy as to the constitutionality of the statute presented by its bill of complaint passed upon by a tribunal having such original jurisdiction, it follows that we do not possess a discretion to grant or refuse the writ, dependent upon our conception as to whether the Kansas statute is or is not constitutional."

CONSTITUTIONAL POWER SHOULD NOT BE USED TO
ESTABLISH CRITERIA IN REGIONS OF GREAT
DIVERGENCE OF OPINION.

This court in the case of *United States vs. Johnson*, 221 U. S. 488, 498, made the following pertinent comment on this point:

"We shall say nothing as to the limits of constitutional power and but a word as to what Congress was likely to attempt. It was much more likely to regulate commerce in food and drugs with reference to plain matter of fact, so that food and drugs should be what they profess to be, when the kind was stated, than to distort the uses of constitutional power to establishing criteria in regions where opinions are far apart."

See also the case of

School of Magnetic Healing vs. McAnnulty,
187 U. S. 94.

THE ACT IS CONSTITUTIONAL AND DOES NOT
DISCRIMINATE.

At the threshold of his brief, counsel quotes at length from the decision of Mr. Justice James, of the District Court of Appeal of the state of California, Second Appellate District, and one might infer that the laws complained of had been held unconstitutional. (Appellant's brief, pp. 5 to 32.)

Such, however, is not the fact. The District Court of Appeal of the state of California, Second Appellate District, consists of one presiding justice and two associate justices. Mr. Justice Shaw, of the court, held the law constitutional, concurred in by Presiding Justice Conrey, a dissenting opinion which is incorporated in appellant's brief being written by Mr. Justice James. Thereupon the case *People vs. Jordan, supra*, was transferred to the Supreme Court of the state of California, where the act was held constitutional.

The decision of the Supreme Court, in bank, the opinion being by Mr. Justice Melvin, concurred in by the entire court, holds the laws constitutional. It is said:

"Section 17 of the act provides: 'Any person who shall practice or attempt to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or who shall diagnose, treat, operate for, or prescribe for, any disease, injury, deformity, or other mental or physical condition of any person, without having at the time of so

doing a valid unrevoked certificate as provided in this act * * * shall be guilty of a misdemeanor.' Section 22 provides that the act shall not be 'construed so as to discriminate against any particular school of medicine or surgery, or any other treatment, nor to regulate, prohibit or to apply to, any kind of treatment by prayer, nor to interfere in any way with the practice of religion.' Appellant insists that the act violates certain constitutional provisions in that it is discriminatory in exempting from its provisions a certain class of drugless practitioners, namely: those who resort to prayer as a means of treating persons afflicted with bodily ills.

Clearly the purpose of the law is to protect both the individual and the public from the dangers and evils which might result from treatment by those not possessing the knowledge and skill requisite in the treatment of diseases with which mankind is afflicted. It is likewise clear that the degree of knowledge and skill, as well as the character thereof required, depends upon the treatment in the practice of which the practitioner engages. Thus, different qualifications are prescribed for those engaging in practice as physicians and surgeons (sec. 10 of the act) from those designated as drugless practitioners; the intention as to each class being that they shall qualify as possessing the knowledge and skill deemed necessary for the practice of the treatment in which the individuals of each class engage. The physician and surgeon is required to possess a knowledge of many subjects which it is not deemed necessary that the drugless practitioner shall possess. By reason of the different

treatment, there is a rational and intrinsic distinction which clearly justifies the classification. Coming to the exempted class of drugless healers, namely: those who treat by means of prayer here, too, there exists an obvious ground for the classification. The treatment practiced by many, though not all, of the drugless practitioners, is by manipulation of the bones and kneading of the muscles and tissues of the person treated. It is apparent that without a proper knowledge of the human body, its organs and functions thereof, or lack of skill, grave consequences to the patient might follow as a result of their treatment. Not so, however, as to one who in prayer invokes divine power to afford relief to one afflicted by disease. The possession of the prescribed knowledge and skill, without which the chiropractic, osteopath and neuropath is denied the right to practice his treatment, in no wise renders the prayers of one thus treating bodily ills more efficacious in the curing of disease; nor can it be said the prayer of an illiterate person may, in the consequences to the subject thereof, be more productive of harm or less beneficial than that of one possessing the learning and skill of an educated physician. To our minds, it is obvious that no reason exists for requiring the class engaged in treatment by prayer to possess the knowledge and skill required of others engaged in drugless treatment. The ground for the classification is as obvious as is the distinction between physicians and surgeons on the one hand, and drugless practitioners on the other, and as to each of which classes a different rule

applies. That the legislature has the right to establish such classification and exempt one class from the operation of a general law, where the same is founded upon some natural, intrinsic, or constitutional distinction, is too well settled to require citation of authority therefor; indeed, its constitutional right so to do is conceded by appellant. In *Ex parte King*, 157 Cal. 161, it is said: 'The question whether the individuals affected by a law do constitute such a class is primarily one for the legislative department of the state, and it is hardly necessary to cite authorities for the proposition that when such a legislative classification is attacked in the courts every presumption is in favor of the validity of the legislative act. Where upon the facts legitimately before a court, it is reasonable to assume that there were reasons, good and sufficient in themselves, actuating the legislature in creating the class, though such reasons may not clearly appear from a mere reading of the law, such assumption will be made, and the legislation upheld. To warrant a court in adjudging the act void on this ground, it must clearly appear that there was no reason sufficient to warrant the legislative department in finding a difference and making the discrimination.' In *Hellman vs. Shoulters*, 114 Cal. 147, the court, in discussing the question of the power of the legislature to classify, says: 'It has been uniformly held that a law is general which applies to all of a class—the classification being a proper one—and that the requirement of uniformity is satisfied if it applies to all the class alike. * * * The word 'uniform' in the constitution does not mean uni-

versal. The section intends simply that the effect of general laws shall be the same to and upon all persons who stand in the same relation to the law, that is, all the facts of whose cases are substantially the same.' In *Ex parte Bohannon*, 14 Cal. App. 321, the question before the court was as to the validity of an act entitled 'An act for the regulation of the practice of medicine and surgery, osteopathy, or other systems or means of treating the sick or afflicted in the state of California,' etc. (Stats. 1907, p. 252), which act concluded with the provision: 'Provided that nothing herein shall be held to apply or to regulate any kind of treatment by prayer.' It was there claimed, as here, that the exemption so made rendered the whole act unconstitutional and void by reason of giving immunities to those who treat physical ills by prayer. The court in its opinion said: 'If prayer can be regarded as practicing medicine and as an immunity, the act allows every person—man, woman or child—such immunity, and the right to pray for the sick and afflicted, and that is the only way that disease can be treated by prayer. Whether such treatment avails anything or not is not for us to say; but the privilege of practicing such treatment or such supplication is granted and allowed to all.' The scripture abounds with instances which, if accepted, tend to show that prayer in the treatment of disease was deemed efficacious and helpful. In the Epistle of James it is said: 'Is any sick among you? Let him call for the elders of the church; and let them pray over him, anointing him with oil in the name of the Lord.'

To assume that treatment by prayer is less efficacious or more dangerous or harmful to the subject of the prayer by reason of the fact that the supplicant has failed to devote 260 hours to manipulative and mechanical therapy, or has neglected to study elementary bacteriology for a period of 60 hours, does violence to all legal or religious teaching. It is clear that it was the legislative intent to omit from the operation of the statute that class of persons engaged in the healing of the sick by the instrumentality of prayer; and, to our minds, it is likewise clear that a natural, intrinsic and reasonable ground exists for making the exemption. Since this is true, it must follow that the act is not violative of those constitutional provisions (sec. 21, art I; subd. 19, sec. 25, art. IV; sec. 11, art. I) having for their purpose the uniform operation of general laws and inhibition against granting immunities to citizens which, *upon the same terms*, shall not be granted to all alike.

"We feel that there is little which we can profitably add to the discussion quoted above, but as it is argued that the act is discriminatory because the prohibitory words thereof make it unlawful for any one of those who fall within its description to 'diagnose' disease, we will further consider this contention. It is said that to 'diagnose' disease does not necessarily involve an intention on the part of the diagnostician either to treat the afflicted person or to prescribe for him in any way, and that to require no diagnosis from those who profess to treat disease by prayer while prohibiting all other unlicensed persons from diagnosing various ailments is an unjust

and unconstitutional regulation, favoring one class of citizens unduly. This whole argument rests upon a misconception of the meaning of the term 'diagnose.' As used in pathology the word means 'to determine the diagnosis of; to ascertain, as a disease from its symptoms.' (Century Dictionary.) The word 'diagnosis' is derived from the Greek prefix 'dia,' meaning 'between,' and 'gignoskein,' which signifies 'to know thoroughly' or 'to distinguish' or 'to discern.' Hence in its primary sense the word 'diagnosis' is used to designate a 'distinguishing between' things or a 'definition.' In pathology it means 'the recognition of a disease from its symptoms.' Some authorities add that the determination is based upon knowledge and experience. Diagnosis is as much a part of the practice of medicine as is the administration of remedies and it is a vastly more important branch thereof because, generally speaking, the treatment of disease is governed by the practitioner's theory regarding its cause. Intelligent treatment may only follow correct diagnosis. It is argued that diagnosis is merely 'guessing,' but that is only partially true. It is matter of common knowledge that in the present development of microscopy, chemistry, bacteriology, radiography and kindred sciences there are some diseases which may be detected with absolute certainty by the accomplished diagnostician. For example, it would be impossible for the educated medical man of today to be deceived into mistaking a case of diphtheria for some throat affection of a less virulent type for the reason that, with modern methods, the specific germ of diphtheria may be easily discovered

and recognized. But even where it depends partly upon conjecture, real diagnosis is the product of knowledge and experience. To diagnose a case is as much a part of the practice of medicine as the drawing of pleadings or the giving of advice are parts of the practice of law. No one would say that an attorney who devoted his efforts to the preparation of cases but did not personally present them in court was not practicing law. The Supreme Court of the United States has declared diagnosis to be a part of the practice of the healing art even in systems of treatment which do not deal with administration of remedies but with mechanical adjustment of parts of the human body. In *Collins vs. Texas*, 223 U. S. 288-296, Mr. Justice Holmes speaking for the court said: 'The plaintiff in error professes, as we understand it, to help certain ailments by scientific manipulation affecting the nerve centers. It is intelligible therefore that the state should require of him a scientific training. *Dent vs. West Virginia*, 129 U. S. 114; *Watson vs. Maryland*, 218 U. S. 173. He, like others, must begin by a diagnosis. It is no answer to say that in many instances the diagnosis is easy—that a man knows it when he has a cold or a toothache. For a general practice science is needed.' Viewed in the light of this language the objection which we have been discussing appears to have no weight. It is impossible to dissociate diagnosis from the practice of the art of healing by any physical, medical, mechanical, hygienic or surgical means. It is therefore competent for the legislature to permit only those persons who are proficient and

who have been found to be educated up to certain standards to 'diagnose' ailments.

"The objection that those who profess to treat bodily afflictions by prayer are not required to be proficient in diagnosis and that their exemption, under the law, is the extension of a favor to them which is withheld from others is met by the obvious answer that diagnosis is no part of such treatment. Those who believe that divine power may be invoked by prayer for the healing of the body believe also that God is all powerful. Patients receiving their ministrations know this and therefore no fraud or injury may be practiced upon such persons by reason of any lack of skill by the healers in determining the nature of the diseases to be treated. But those who elect to depend upon some other system of treatment have a right to protection by the state from the ministrations of unskillful, uneducated persons. For example, a sufferer from a fever who summons a licensed physician holding himself out to the public as one qualified to treat the sick, is entitled to the services of a doctor who has been taught to discriminate between typhoid and smallpox. In other words, the right to practice medicine should carry with it some assurance to the public that the licensed practitioner possesses reasonable proficiency in the technique of his profession."

In *People vs. Ratledge*, Volume 51, California Decisions, page 446, the same court says:

"All of the other questions of any moment which are raised on this appeal have been answered by the opinions in the case of *People*

vs. *Jordan* cited above, but because of the earnest insistence of counsel in all of these cases upon one point, perhaps further attention may with profit be given to it. The argument is made that because the law includes such subjects as histology, elementary chemistry, toxicology, physiology, elementary bacteriology and pathology in the examinations to be taken by applicants for certificates to practice as drugless healers, it is unfair, because these are standard courses of study in the preparation of physicians and surgeons but are not needed in the art of those who intend to alleviate human suffering by manual and mechanical means only. The answer is that to the legislature is committed the duty of determining the amount and quality of scientific education necessary for the individual to possess before he may hold himself out to practice the healing art. Unless the legislative conclusion upon that subject is obviously unfair we may not interfere, for the scope of the police power is very extensive and the discretion of the legislature in exercising such power is very broad. It is not for us to substitute our discretion and judgment for those of the legislature, although we may say in passing that the wisdom of some of the requirements for practice mentioned above would strongly appeal to us even if we did possess a broader power than is given to us. For example, the importance of a knowledge of toxicology will be evident to everyone. Without it the drugless practitioner might apply his manipulations to one suffering from the effects of a poison and might continue his efforts until time for the successful administration of an antidote

had passed. All that we have said in the Jordan case about diagnosis applies to this branch of the discussion. Many years ago this court, speaking through Mr. Chief Justice Wallace, announced the rule that in matters relating to public health the scientific correctness of the legislative body in imposing certain restrictions deemed to be for the public good is, generally speaking, not open to review. (*Johnson vs. Simonton*, 43 Cal. 242-249.) To be sure in that case there was a collateral attack upon a statute and not a direct one, but we cite the authority to illustrate the unwillingness of courts to interfere with legislative discretion exercised in the passage of laws pertaining to public health. In *Ex parte Lacey*, 108 Cal. 326-329, the rule of *Johnson vs. Simonton* was given application in a proceeding on habeas corpus involving a direct assault upon the constitutionality of a law designed for the promotion of public hygiene. The state has the right to specify and lay out a course of study and to establish a standard of efficiency. In *Ex parte Gerino*, 143 Cal. 412-417, this court sustained a provision of the medical law requiring that as one of the steps towards securing a certificate to practice medicine and surgery the applicant must produce a diploma issued by a medical college, the requirements of which should be equal to those prescribed by the Association of American Medical Colleges. In *Ex parte Whitley*, 144 Cal. 167-177, this court approved the Dental Practice Act, which prescribed among other things certain elementary educational qualifications in those seeking certificates to practice dentistry. It was held

that the necessity for education, its nature and its extent depend primarily upon the judgment of the legislature which may not be controlled by the courts, so long as it is reasonably exercised. And it is not necessary that to be within reason a required study must be one pertaining immediately to the branch of the healing art which an applicant for a license wishes to practice. For example, the algebra studied by a dental practitioner in his high school course may not bear directly upon his practice, but the study of mathematics is undoubtedly one of the means of culture by which his mind is better fitted to cope with professional problems and to acquire a mastery of stomatology sufficient for its practice by him without danger to the public. Further illustrations we think are not necessary to direct attention to the exercise of the power of legislative bodies in prescribing educational tests which must be met and passed by those seeking to secure licenses to practice medicine and other professions over which the state exercises control. Again let us call attention to the words of Mr. Justice Holmes quoted in the *Jordan* case: 'The plaintiff in error professes, as we understand it, to help certain ailments by scientific manipulation affecting the nerve centers. It is intelligible therefore that the state should require of him scientific training * * * For a general practice science is needed.' (*Collins vs. Texas*, 223 U. S. 288-296.) We conclude that there is nothing unreasonable in the curriculum prescribed by the Medical Practice Act for those wishing to secure licenses to practice the art of drugless healing."

And the above is reinforced by the somewhat expressive language of the Court of Appeal, in the First Appellate District, in the case of *Ex parte Bohannon*, 14 Cal. App. 322. In this case it was argued that the Medical Practice Act was unconstitutional and void because it discriminated in favor of persons healing by prayer, but the Court of Appeal disposed of this contention as follows:

“Petitioner desires to have a writ of habeas corpus to obtain his release from imprisonment under a judgment rendered in a court of competent jurisdiction, convicting him of unlawfully practicing medicine without having a license or a valid unrevoked certificate authorizing him to practice medicine, contrary to the provisions of the law in such case made and provided.

“The act under which the petitioner was convicted is entitled, ‘An act for the regulation of the practice of medicine and surgery, osteopathy, or other system or means of treating the sick or afflicted in the state of California; for the appointment of a board of medical examiners in the matter of said regulation.’ (Stats. 1907, p. 252; General Laws [1910, p. 609], Act 2163.) The act concludes with the following exception or proviso: ‘Provided that nothing herein shall be held to apply or to regulate any kind of treatment by prayer.’

“It is claimed that the latter exemption makes the whole act unconstitutional and void, and that it gives to a certain class of persons, to wit, those who treat physical ills by prayer, privileges and immunities which ‘under like conditions are not granted to all citizens.’

"We do not so construe the section. If prayer can be regarded as practicing medicine and as an immunity, the act allows every person—man, woman or child—such immunity, and the right to pray for the sick and afflicted, and that is the only way that disease can be treated by prayer. Whether such treatment avails anything or not is not for us to say; but the privilege of practicing such treatment or such supplication is granted and allowed to all. A prayer is only a reverent petition to some divinity or object of worship. It has been said, 'More things are wrought by prayer than this world dreams of.' Those who believe in the teachings of holy writ attach great importance to the efficacy of prayer. Many examples of it are given in the New Testament. For instance, where Peter's wife's mother lay sick of a fever we are told that the Saviour 'touched her hand and the fever left her, and she arose and ministered unto them.' The proviso or exception was evidently put into the act to prevent any interference with the right of anyone to pray for the sick and afflicted.

"Writ denied."

Again we find the same litigant in court in 1914, the case being *Bohannon vs. Board of Medical Examiners*, 24 Cal. App. 215, and questions of the validity of the same law are reviewed at length in this case.

Upon an examination of the case just cited, it will be noted that the contention made by the appellant was that a certain classification in the law was unreasonable. In 1909, there was an amendment adopted to the Medical Practice Act of 1907, provid-

ing that the medical examining board might issue a certificate to any person who had practiced a special branch of medicine and surgery for a period not less than thirty-five years; fifteen years of which time must have been spent in California.

The contention pressed in the briefs and argument of counsel was that the right to receive a diploma was not based upon a test of ability, but flowed from the commission of a number of misdemeanors. The court, expressing its opinion through Mr. Justice Kerrigan, started with the premise that the law must be upheld unless clearly violative of the constitution.

The court very thoroughly, and with careful and extended labor, reviewed many of the decisions of this state upon reasonable and unreasonable qualities in discriminatory legislation. The opinion is enlightening upon this general subject.

The court sustained the law as constitutional and made an appropriate order in the premises.

THE ACT DOES NOT CREATE A MONOPOLY IN FAVOR OF THOSE WHO HEAL BY CHRISTIAN SCIENCE.

No monopoly is created in favor of those who heal through the ministrations of Christian Science, as the act expressly states that:

“Nor shall this act be construed so as to discriminate against any particular school of medicine or surgery, or any other treatment, nor to regulate, prohibit or to apply to, any kind of treatment by prayer, nor to interfere in any way with the practice of religion.”

(Transcript of record, page 18.)

Thus it will be readily seen that the exemption includes all persons who heal by "treatment by prayer" or in the course of "the practice of a religion." This point is definitely covered in the case of *Ex parte Bohannon*, 14 Cal. App. 322, wherein it was said:

"If prayer can be regarded as practicing medicine and as an immunity, the act allows every person—man, woman, or child—such immunity, and the right to pray for the sick and afflicted, and that is the only way that diseases can be treated by prayer."

We might add that those who employ prayer in the healing art or heal as a part of a religious practice would be exempt from a medical practice act, without such exemption appearing in the act. The Supreme Court of the state of Kansas has the following to say on this subject:

"The express exclusion of religious belief in the application of the law was hardly necessary. Religious freedom is guaranteed by the constitution, and without mention in the statute would have been implied."

State of Kansas vs. Wilcox, 64 Kansas, 789.

The legislatures of seventeen states of the Union have incorporated in the medical practice acts of their states an exemption in favor of those who heal by prayer or in the course of the practice of a religion, and ex-President Taft, by a special amendment to his executive order of October 14, 1914, for the Panama Canal Zone, adopted for the purpose,

exempted such treatment of the sick in the following language:

“Nothing in this order shall be construed to prohibit the practice of the religious tenets of any church in the ministering to the sick or suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided sanitary laws are complied with.”

For the convenience of the court we have added as Appendix “A” hereto the clauses of the medical practice acts of the various states providing for the exemption of those who employ prayer only in their treatment and those who heal in the course of the practice of a religion. Such acts have been held constitutional in other states than California, as is more fully set out hereinafter.

Other religious denominations than Christian Science have provisions in their creeds, prayer books or manuals providing for the healing of the sick or the treatment of the sick by prayer, and of course those of such denominations are likewise exempted from the operation of this act.

“The Pilgrims Pastor’s Manual” of the Congregational faith, at page 73 thereof, in chapter entitled, “Brief Selections of Scripture for the Sickroom,” provides as follows:

“Blessed is he that supporteth the poor; The Lord will deliver him in the day of evil.

"The Lord will preserve him, and keep him alive, and he shall be blessed upon the earth;

* * *

"The Lord will support him upon the couch of languishing."

"The Government, Discipline and Worship of the Presbyterian Church, in the United States of America" (1909) at page 107, in chapter entitled, "Of the Visitation of the Sick" has the following to say:

"At a proper time when he is most composed the minister shall pray with and for him."

"The Book of Common Prayer, according to the use of the Protestant Episcopal Church in the United States of America," at page 282, in chapter entitled, "The Order for the Visitation of the Sick," contains the following:

"Hear us, Almighty and most merciful God and Saviour; extend Thy accustomed goodness to this Thy servant, who is grieved with sickness; sanctify, we beseech Thee, this thy Fatherly correction to him; that the sense of his weakness may add strength to his faith, and seriousness to his repentance; that if it shall be thy good pleasure to restore him to his former health, he may lead the residue of his life in Thy fear and to Thy glory;"

The "Methodist Discipline" (1908), edited by Bishop Daniel A. Goodsel, Joseph B. Hingeley, and

James N. Buckley, in chapter entitled, "Consecration and Ordination," contains the following:

"Then shall the bishop deliver to him the Bible saying: * * * Be to the flock of Christ a shepherd, not a wolf; feed them, devour them not. Hold up the weak, heal the sick, bind up the broken, bring again the outcast, seek the lost; be so merciful that you may not be too remiss; * * *"

The appellant's contention that a monopoly is conferred upon the Christian Scientists by the act may be as a result of the success which seems to be attending the practice of Christian Science in the healing field, but it is not for us to say that the prayers of those of the other religious denominations do not bear fruit.

Healing by prayer or as a part of the practice of a religion has ample justification in the Scripture, and we have attached hereto as Appendix "B" a collection of incidents taken from the Scriptures establishing the fact that such healing was brought about through such ministrations in Bible times.

DISTINCTIONS RECOGNIZED BY THE COURTS BETWEEN HEALING BY SPIRITUAL MEANS OR PRAYER AND OTHER MEANS.

The Supreme Court of the state of Washington in a recent decision, has distinguished between "healing by prayer" and "suggestive therapeutics" or healing

by the use of mental suggestion. The Washington medical practice act provides:

“Nor shall this chapter be construed to discriminate against any particular school of medicine, of surgery, or osteopathy or any system or mode of treating the sick or afflicted, or to interfere in any way with the practice of religion; provided that nothing herein shall be held to apply to or to regulate any kind of treatment by prayer.”

In the case of *State of Washington vs. T. F. Pratt*, Volume 38, Washington Decisions (advance sheet) page 83, the Supreme Court had this to say:

“Suggestive therapeutics, as shown by the record before us, is not the practice of any religious belief, nor is it ‘any kind of treatment by prayer.’ As practiced by the appellant, it consists of a laying on of hands upon that part of the body where the trouble is and, quoting from appellant’s testimony, ‘upon certain parts of the spine that controls this—these nerves, or the nerves that control the organ; and I give certain suggestions which goes from my mind to the mind of the patient, and the mind of the patient controls his own body. That is the way the cure is performed.’ The claim is also made that, by this laying on of hands, certain ‘vibrations’ are sent through the body, that are instrumental in effecting the cure. That the mind exercises a powerful and oftentimes controlling influence upon the body can not be denied, and we are offering no criticism upon appellant’s methods. We are

only concerned with the fact that it is a mode of treating the sick, and as such can be practiced only after obtaining the proper certificate from the state medical board."

The Supreme Court of the state of Illinois has distinguished between healing by spiritual means and magnetic healing in the case of *People vs. Gordon*, 144 Ill. 560. It appears that the defendant Gordon, who had been prosecuted for practicing medicine without a license, held himself out to be a "magnetic healer." He had an office in an office building, and on the door thereof appeared the inscription "Dr. Gordon, Healer," or "Magnetic Healer." It further appeared that he consulted with patients as to their ailments and treated them and that his treatment consisted of massaging and rubbing, using no drugs, medicines or material remedies and prescribing no diet; that the treatment, according to defendant's testimony, was a magnetic treatment or mental science and mental suggestion was employed. On this statement of fact he attempted to avail himself of the exemption in the Illinois Medical Practice Act, which provides as follows:

"And this act shall not apply to * * * any person who ministers to or treats the sick or suffering by mental or spiritual means, without the use of any drug or material remedy."

Hurd Rev. Stats. 1909, Ch. 91, sec. 11 (p. 1474).

Also Laws (1889) p. 275, sec. 7.

The court held:

"We are unable to see how, under his own evidence, this position can be maintained. It is true he does not use 'drugs or other material remedy;' neither does he treat the 'sick or suffering by mental or spiritual means,' and therefore whether the word 'material' is to be construed as meaning other treatment similar to the use of drugs is wholly immaterial. Very clearly this provision means that those who pretend to relieve the ailments of others by mere mental or spiritual means shall not be considered within the act; but if the defendant, under the proof in this case can bring himself within that exception, then every one who treats diseases without administering medicine, either externally or internally, can also be brought within the exception. Few, perhaps, if any, physicians attempt to treat the sick and suffering without appealing to the mental faculties, to a greater or less degree, in aid of the remedies they apply or prescribe; but that is not treating the sick by mental or spiritual means."

It will be seen from the decisions above quoted that it is not proper to class Christian Scientists or those who heal the sick by prayer or in the practice of a religion, as "drugless healers," notwithstanding the fact that they do not employ drugs. It should be obvious therefore that those who heal the sick by any means other than "treatment by prayer," or in the "practice of a religion" and those who employ such last mentioned means belong to different classes, based upon sound and reasonable distinctions.

THIS COURT CAN TAKE JUDICIAL NOTICE OF THE FACT THAT THE HEALING OF THE SICK IS A PART OF THE RELIGIOUS PRACTICE OF THE CHRISTIAN SCIENCE CHURCH.

The growth and activity of the Christian Science Church has reached such proportions that the fact that the healing of the sick is a part of the practice of the religion of that church is well known and this court can take judicial notice of this fact. For the convenience of the court we have attached hereto as Appendix "C" the tenets of the Christian Science Church, as set forth on page 15 of "Church Manual of The First Church of Christ, Scientist, in Boston, Massachusetts."

In the case of *Glover vs. Baker*, 76 New Hampshire, 393, 416, the court says:

"If necessary, no reason occurs why the 'tenets' of Christian Science may not be as readily passed upon as the creed of Congregationalism or the faith of Unitarianism."

In the case of *Hilton vs. Roylance*, 25 Utah, 129, appears the following:

"Courts will take notice of matters of history, of the contents of the Bible, of the fact that there are religious sects, of the creed and general doctrines of each sect."

And in California, it has been repeatedly held that the rule set forth above is sound. The Supreme Court of that state has said:

"The court will refer to such books as it finds most informing."

Rogers vs. Cady, 104 Cal. 288.

Also see

People vs. Mayes, 113 Cal. 618.

TREATMENT BY PRAYER OR IN THE COURSE OF THE
PRACTICE OF A RELIGION DOES NOT CONSTITUTE
THE PRACTICE OF MEDICINE.

Treatment by prayer or the healing of the sick in the course of the practice of a religion has been repeatedly held not to come within the meaning of the term "the practice of medicine." In the case of *State vs. Mylod*, 20 Rhode Island, 632, the court held:

"Prayer for those suffering from disease, or words of encouragement, or the teaching that disease will disappear and physical perfection be attained as a result of prayer, or that humanity will be brought into harmony with God by right thinking and a fixed determination to look upon the bright side of life does not constitute the practice of medicine in the popular sense."

Also see *Kansas City vs. Baird*, 92 Mo. App. 204, and *State vs. Smith*, 233 Mo. 242, at 261-2.

CONSIDERATION OF CASES CITED IN APPELLANT'S BRIEF.

The only citation presented by the appellant's brief which in any wise supports his contention is the minority opinion of Justice James of the District Court of Appeal, in the case of *People vs. Jordan*, when that case was before the District Court. As

pointed out above, the Jordan case was transferred to the Supreme Court of the State of California because the three justices could not agree on the decision, and the decision of the Supreme Court in this case completely answers every phase of the minority opinion of Judge James.

People vs. Jordan, supra.

The other cases cited by appellant are of no assistance to him in this controversy, but might be, if at all, when presented in defense of a criminal prosecution for a violation of the act in question.

MEDICAL LEGISLATION IS SALUTARY AND CERTAIN
DISCRIMINATIONS ARE NECESSARY.

Few professions require more careful preparation by one who seeks to enter it than that of medicine. The power of the state to provide for the general welfare of its people authorizes it to prescribe such regulations as are necessary for the public welfare, and necessary to insure the people of the state against the consequences of ignorance and incapacity.

Dent vs. West Virginia, 129 U. S. 114.

Watson vs. Maryland, 218 U. S. 173.

In the last case a statute of the state of Maryland, containing provisions regulating the practice of medicine, provided an exemption in favor of persons practicing before January, 1898, and who were practicing when the law became effective. Other ex-

ceptions were also made. The section making certain of the exemptions reads:

“* * * but nothing herein contained shall be construed to apply to gratuitous services, nor to any resident or assistant resident physician or students at hospitals in the discharge of their hospital or dispensary duties, or in the office of physicians, or to any physician or surgeon from another state, territory, or district in which he resides when in actual consultation with a legal practitioner of this state or to commissioned surgeons of the United States Army or Navy or Marine Hospital Service, or to chiropodists, or to midwives, or to masseurs or other manual manipulators, who use no other means; nor shall the provisions of this subtitle apply to physicians or surgeons residing on the borders of a neighboring state, and duly authorized under the laws thereof to practice medicine or surgery therein, whose practice extends into the limits of this state:”

The court said in connection with these provisions:

“It is contended that to except from the provisions of the act the physicians who were practicing medicine in the state prior to the first day of January, 1898, who at the time of the passage of the act were practicing medicine or surgery, and who could prove by affidavit that within one year of said date they had treated at least twelve persons in their professional capacity, is an unreasonable and arbitrary classification, resulting in the exclusion from the exception of physicians

of equal merit and like qualifications with those who are within its terms."

* * * * *

"In *Dent vs. West Virginia*, 129 U. S. 114, the subject is elaborately considered, and this view affirmed by Mr. Justice Field, speaking for the court. In such statutes there are often found exceptions in favor of those who have practiced their calling for a period of years. In the *Dent* case, *supra*, an exception was made in favor of practitioners of medicine who had continuously practiced their profession for ten years prior to a date shortly before the enactment of the law. Such exception proceeds upon the theory that those who have acceptably followed the profession in the community for a period of years may be assumed to have the qualifications which others are required to manifest as a result of an examination before a board of medical experts. In the statute under consideration the excepted class were those who had practiced before the first day of January, 1898, being more than four years before the passage of the law, and who could show, presumably with a view to establishing that they were actively practicing at that time, that they had treated at least twelve persons within one year of that date.

"Conceding the power of the legislature to make regulations of this character, and to exempt the experienced and accepted physicians from the requirements of an examination and certificate, the details of such legislation rest primarily within the discretion of the state legislature."

* * * * *

“The stress of the argument for the plaintiff in error as to these exceptions is put upon the exemption of resident physicians, or assistant physicians, at hospitals, and students on hospital and dispensary duties. The selection of the exempted classes was within the legislative power, subject only to the restriction that it be not arbitrary or oppressive and apply equally to all persons similarly situated. We can not say that these exceptions nullify the law. The reason for them may be that hospitals are very often the subject of state or municipal regulation and control, and employment in them may be by boards responsible to public authority under state law or municipal ordinance. Certainly the conduct of such institutions may be regulated by such laws or municipal regulations as might not reach the general practitioner of medicine. In any event, we can not say that these exceptions are so wholly arbitrary and have such slight relation to the objects to be attained by the law as to require the courts to strike them down as a denial of the equal protection of the law within the meaning of the federal constitution.”

The questions presented in the dissenting opinion already referred, are touched upon in the United States Supreme Court in an opinion rendered recently by Mr. Justice Oliver Wendell Holmes (*Collins vs. Texas*, 223 U. S. 288).

In that case just cited an osteopathic doctor was arrested under a statute of the state of Texas for practicing the healing of persons without authority.

The opinion furnished a survey of the statute involved:

“The statute establishes a board of medical examiners and requires ‘all legal practitioners of medicine in this state, who, practicing under the provisions of previous laws, or under diplomas of a reputable and legal college of medicine, have not already received license from a state medical examining board of this state’ to prove their diplomas, or existing license, or exemption existing under any law; whereupon they are to receive a verification license (sec. 6). By section 7 applicants not licensed under section 6 must pass an examination, conditioned among other things on their being graduates of ‘bona fide reputable medical schools’; schools to be considered reputable ‘whose entrance requirements and courses of instruction are as high as those adopted by the better class of medical schools of the United States, whose course of instruction shall embrace not less than four terms of five months each.’ By section 9 the examinations are to be fair to every school of medicine, are to be conducted on the scientific branches of medicine only, and are to include anatomy, physiology, chemistry, histology, pathology, bacteriology, physical diagnosis, surgery, obstetrics, gynecology, hygiene and medical jurisprudence. Those who pass are to be granted licenses to practice medicine. By section 10 nothing in the act is to be construed to discriminate against any particular system, and the act is not to apply to dentists legally registered and confining themselves to dentistry, nurses who practice only nursing, masseurs, or

surgeons of the United States Army, Navy, etc., in the performance of their duties."

Following, the court expatiated upon the subject in the following language:

"The facts charged against the plaintiff in error are admitted. It also is admitted that before the passage of the statute he had spent \$5,000 in fitting up his place, and was deriving a net income from his calling of at least the same sum. He held a diploma from the chartered American School of Osteopathy, Kirksville, Missouri, after a full two years course of study there, but it does not appear that he presented this diploma to the board of medical examiners or attempted to secure either a verification license or license in any form. The board in passing upon qualifications does not examine in therapeutics or materia medica, which, it will be observed, are not mentioned in the act. *On these facts we are of opinion that the plaintiff in error fails to show that the statute inflicts any wrong upon him contrary to the fourteenth amendment of the Constitution of the United States.* If he has not suffered we are not called upon to speculate upon other cases, or to decide whether the followers of Christian Science or other people might in some event have cause to complain.

"We are far from agreeing with the plaintiff in error that the definition of practicing medicine in section 13 is arbitrary or irrational, but it would be immaterial if it were, as its only object is to explain who fall within the purview of the act. That it does, and of course we follow the Texas court in its decision that the plaintiff

in error is included. It is true that he does not administer drugs, but he practices what at least purports to be the healing art. The state constitutionally may prescribe conditions to such practice considered by it to be necessary or useful to secure competence in those who follow it. We should presume, until the Texas courts say otherwise, that the reference in section 4 to the diploma of a reputable and legal college of medicine, and the confining in section 7 of examinations to graduates of reputable medical schools, use the words medicine and medical with the same broad sense as section 13, and that the diploma of the plaintiff in error would not be rejected merely because it came from a school of osteopathy. In short, the statute says that if you want to do what it calls practicing medicine you must have gone to a reputable school in that kind of practice. Whatever may be the osteopathic dislike of medicines, neither the school nor the plaintiff in error suffers a constitutional wrong if his place of tuition is called a medical school by the act for the purpose of showing that it satisfies the statutory requirements. He can not say that it would not have been regarded as doing so, because he has not tried.

Dent vs. West Virginia, 129 U. S. 114, 124.

“An osteopath professes, the plaintiff in error professes, as we understand it, to help certain ailments by scientific manipulation affecting the nerve centers. It is intelligible therefore that the state should require of him a scientific training. *Dent vs. West Virginia*, 129 U. S. 114; *Watson vs. Maryland*, 218 U. S. 173. He like

others must begin by a diagnosis. It is no answer to say that in many instances the diagnosis is easy—that a man knows it when he has a cold or a toothache. For a general practice science is needed. *An osteopath undertakes to be something more than a nurse or a masseur, and the difference rests precisely in a claim to greater science, which the state requires him to prove.* The same considerations that justify including him justify excluding the lower grades from the law. *Watson vs. Maryland*, 218 U. S. 173, 179, 180. Again, it is not an answer to say that the plaintiff in error is prosecuted for a single case. If the legislature may prohibit a general practice for money except on the condition stated, it may attach the same conditions to a single transaction of a kind not likely to occur otherwise than as an instance of a general practice. A distinction between gratuitous and paid services was made in the Maryland statute sustained in *Watson vs. Maryland*, 218 U. S. 173, 178. Finally the law is not made invalid as against the plaintiff in error by the fact that he had an established business when the law was passed.”

Dent vs. West Virginia, 129 U. S. 114;

Reetz vs. Michigan, 188 U. S. 505, 510.

It is proper to enact discriminatory legislation, provided the subjects between which is drawn the discrimination are so different as to require different treatment.

The constitution of this state and the constitutions of many states expressly provide that no discrimination may be exercised in the application and

enforcement of laws applicable to both sexes. It is said that each sex shall have an equal opportunity before the law and that no law, therefore, shall be enforced so as to permit one sex to have greater and wider opportunities and advantages than the other. But where ordinances of cities and laws passed by the state legislative bodies declare that women shall not be permitted in saloons and other places where intoxicating liquors are sold, they have been sustained as constitutional upon the theory that the discrimination was based upon a rational and logical distinction between the natural privileges of the sexes, particularly in view of the fact that the mixture of the sexes and the personal contact of members thereof, under influences which attend in places where intoxicating liquors are sold and consumed, are such as to promote and encourage immorality and licentiousness.

The distinction between treating the sick by prayer and treating the sick by other drugless methods is obvious. Where a person manipulates the human frame with the fingers, or by the pressing of his hands, or by other forms of manipulation, it is natural to presume that he should have a thorough knowledge of the human anatomy, and of the bones, muscles, sinews, nerves, arteries and veins of the body, to insure in him an ability and skill sufficient to warrant his undertaking the relieving of ills. Where the method of treatment embraces any system involving physical means, resulting in physical change, a knowledge of the body is necessary to insure the

patient against injury. Healing by prayer or purely mental treatment, would not seem to require any educational advantages, at least an educational training upon the same subjects as required by those who treat by physical means. I can see no reason why a rational distinction does not lie between healing by prayer and healing by other means, such as manipulation of the vertebræ and other portions of the body.

EXEMPTIONS IN FAVOR OF TREATING THE SICK AND AFFLICTED BY SPIRITUAL MEANS HAVE BEEN SUSTAINED AS VALID AND CONSTITUTIONAL IN OTHER STATES.

Board of Medical Examiners vs. Freenor, 154 Pac. 941 (Jan. 1916).

People vs. Gordon, 194 Ill. 560.

State vs. Wilcox, 64 Kan. 789; 68 Pac. 634.

In the case last named the court reviewed a statute of the state of Kansas nearly identical in subject matter with the act reviewed in this instance. In delivering the opinion, the court covered the particular phase:

“The act is not invalid because it provides that ‘nothing in this act shall be construed as interfering with any religious beliefs in the treatment of diseases, providing, that quarantine regulations relating to contagious diseases are not infringed upon’ (sec. 6). The express exclusion of the element of religious belief in the application of the law was hardly necessary. Religious freedom is guaranteed by the constitution, and without mention in the statute would have been

implied, and we can see nothing in this provision which makes an illegal discrimination against or in favor of any class of physicians. Neither is there any force in the objection to the provision making the statute inapplicable to the administration of domestic medicines, or to gratuitous services which one friend or neighbor may render to another. It is the practice of medicine and surgery for compensation that is sought to be regulated and controlled, and not the use of home remedies, nor the neighborly offices which one may kindly and gratuitously perform for another."

The contentions of appellant are found on pages 4 and 5 of his opening brief. They are:

1. (a) That the acts are unconstitutional because they extend special privileges to those who employ prayer in the treatment of diseases.

(b) That they are unconstitutional because they discriminate against those drugless practitioners of every school of drugless healing and in favor of those using prayer only.

(c) That they are unconstitutional as discriminating between those who practice healing by mental suggestion, laying on of hands, anointment with oil and kindred treatments and those who use prayer only.

As to the first contention the acts do not grant special privileges to any person or class of persons. *All persons*, whether physicians, drugless practitioners, or Christian Scientists, are permitted to treat

the sick through prayer alone. It is not even required that such plan of treatment be a part of the religion of those using it. The acts merely leave *all* persons free to practice treatment by prayer, and expressly provide that they shall not be construed to "regulate, prohibit or apply to, any kind of treatment by prayer."

There is here no guarantee of special privileges or immunities such as are prohibited by the constitution, because the privilege of treatment by prayer is preserved to all those who desire to avail themselves of it. The fact that some may not believe in prayer, or that it may be more advantageous to them to discourage belief in prayer and encourage treatment by some of the methods for which licenses are required does not affect the constitutional question. Furthermore, the "equal privileges" which are guaranteed to citizens of the state are those only which arise from the federal government and are guaranteed to all citizens of the United States as such.

Duncan vs. Missouri, 152 U. S. 382.

United States vs. Moore, 129 Fed. 632.

In re Kremler, 136 U. S. 436, 448.

The treatment of the sick does not come within these guaranties.

2. As to appellant's second contention, it is submitted that the constitutionality of an act can not be attacked merely because it prohibits acts by persons of a particular class and does not cover acts of another class. The legislature was concerned merely with the practice of medicine and treatment of the

sick through material means. It is to be presumed that the legislature then deemed that such modes of practice only needed regulation. It was not required to regulate any mode of treatment. In omitting to regulate treatment by prayer it has not rendered unconstitutional the regulations prescribed for those modes of treatment which it deemed required regulation. In this connection the decision of this court concerning the California law relating to hours of labor for women is directly in point. We quote from *Miller vs. Wilson*, 236 U. S. 373, at page 383:

“The contention as to the various omissions which are noted in the objections here urged ignores the well established principle that the legislature is not bound, in order to support the constitutional validity of its regulation, to extend it to all cases which it might possibly reach. Dealing with practical exigencies, the legislature may be guided by experience. *Patson vs. Pennsylvania*, 232 U. S. 138, 144. It is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. As has been said, it may ‘proceed cautiously, step by step,’ and ‘if an evil is specially experienced in a particular branch of business’ it is not necessary that the prohibition ‘should be couched in all embracing terms.’ *Carroll vs. Greenwich Insurance Co.*, 199 U. S. 401, 411. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. *Keokee Coke Co. vs. Tayler*, 234 U. S. 224, 227.”

3. The third contention, in so far as appellant is concerned, is covered by his second point. In so far as his objection reaches other modes of treatment such as "mental suggestion" appellant is not the party to raise it. No person practicing any other modes of treatment has objected to the law. In any event, this objection is answered by what is said regarding appellant's second objection.

It is respectfully submitted that the acts complained of are constitutional and should be so held.

Dated September 18, 1916.

U. S. WEBB,

Attorney General of the State of
California.

ROBERT M. CLARKE,

Deputy Attorney General.

THOMAS LEE WOOLWINE,

District Attorney of Los Angeles
County, California, and

GEORGE E. CRYER,

Assistant District Attorney of Los
Angeles County, California.

Solicitors for Appellees.

APPENDIX "A."

Medical practice acts of many states expressly permit the practice of Christian Science *eo nomine* and in others the exemption clause is more broadly worded exempting those who heal by prayer or who heal in the course of a practice of a religion. The respective states where the medical practice acts contain such exemption follow with the provision of the medical practice act of each.

Maine:

"The seven preceding sections shall not apply to * * * persons practicing * * * Christian Science."

Rev. Sts. 1903, Ch. 17, sec. 16; 1895, Ch. 170.

New Hampshire:

"Neither shall the provisions of this act apply to * * * Christian Science, so called, or any method of healing if no drugs are employed or surgical operations are performed."

1897, Ch. 63, sec. 11.

In 1915 the legislature of New Hampshire changed the law so as to read as follows:

"This act shall not be construed so as to interfere in any way with the practice of those who endeavor to prevent or cure diseases or suffering by spiritual means or prayer."

1915, Ch. 167, sec. 17.

Connecticut:

"This chapter shall not apply to * * * any person practicing Christian Science."

Gen. St. 1902, sec. 4714;

1897, Ch. 197, sec. 4714;

1896, Ch. 158, sec. 1.

Kentucky:

"The term practice of medicine as used in this act shall be construed to be the treatment of any human ailment or infirmity by any method * * * but this act shall not apply to the practice of Christian Science."

Ky. Sts. 1915, sec. 2615, Ch. 5;

Acts of 1904, Ch. 34, sec. 5.

Massachusetts:

"The provisions of the eight preceding sections * * * shall not apply to * * * Christian Science."

R. L., Ch. 76, sec. 9.

North Dakota:

"Nothing in this act, however, shall be construed to prohibit the practice of Christian Science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion or healing, provided that the person administering or making use of or assisting or prescribing such do not prescribe or administer drugs or medicines nor perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians or surgeons."

Comp. L. sec. 463; Acts of 1911, Ch. 189, sec. 6.

South Dakota:

"This act shall not apply * * * to Christian Scientists as such, who do not practice medicine, surgery or obstetrics by any material agency or agencies."

Compiled Laws 1910, p. 72;
1903, Ch. 176, sec. 22.

Tennessee:

"Any person shall be regarded as practicing medicine within the meaning of this act who shall treat or profess to treat, operate on, or prescribe for any physical ailment or physical injury to or deformity of another; providing that nothing in this section shall be construed to apply * * * to Christian Scientists."

1901, Ch. 78, sec. 19.

Territory of Hawaii:

"And further provided, that nothing herein contained shall apply to so-called Christian Scientists so long as they merely practice the religious tenets of their church without pretending a knowledge of medicine or surgery."

Acts of 1909, Par. 124, sec. 1.

Indian Territory:

"And provided further that osteopathy, massage, Christian Science and herbal treatment shall not be affected by this act."

33 U. S. St. at L. (58 Cong.) (1904.) Pt. I,
Ch. 1493, sec. 16.

Arizona:

"Nor shall this act be construed so as to discriminate against any particular school of medicine or surgery or osteopathy, or any other system or mode of treating the sick or afflicted, or to

interfere in any way with the practice of religion; providing that nothing herein shall be held to apply to or to regulate any kind of treatment by prayer."

Rev. Sts. 1913, Title 48, sec. 4750;

Acts of 1913, Ch. 17, sec. 18.

California:

"Nor shall this act be construed so as to regulate, prohibit or to apply to, any kind of treatment by prayer, nor to interfere in any way with the practice of religion."

Acts of 1907, Ch. 212, sec. 17;

St. 1913, p. 722.

Colorado:

"Nothing in this act shall be construed to prohibit gratuitous service in case of emergency nor the practice of the religious tenets or general beliefs of any church whatsoever, not prescribing medicine or administering drugs."

Rev. Sts. (1908), sec. 6069;

St. 1905, p. 349.

Florida:

"Mental healers and all persons claiming to heal by absent treatment shall pay a license tax of two hundred dollars each, and in each county; provided, that nothing in this clause shall be construed as affecting the members of any Christian denomination who pray for the recovery of the sick."

Gen. Laws 1913, Ch. 6421 (No. 1), sec. 36.

Georgia:

"Nothing in this act shall be construed * * * to prohibit * * * the practice of the religious tenets or general beliefs of any church whatsoever."

Acts of 1913, No. 229, sec. 15.

Illinois:

"And this act shall not apply to * * * any person who ministers to or treats the sick or suffering by mental or spiritual means, without the use of any drugs or material remedy."

Hurd Rev. Sts. 1909, Ch. 91 (p. 1474);

Laws (1889), p. 275, sec. 7;

See case of *People vs. Gordon*, 194 Ill. 560, 570.

Kansas:

"Nothing in this act shall be construed as interfering with any religious beliefs in the treatment of disease; provided, that quarantine regulations relating to contagious diseases are not infringed on."

Gen. Sts. (1909), sec. 8090;

St. 1901, Ch. 254, sec. 6;

Also see case of *State vs. Wilcox*, 64 Kan. 789.

Louisiana:

"Nothing in this act however shall be construed to prohibit the practice of the religious tenets of any church whatsoever."

1908, and 241, sec. 3, amending 1894 Act 49.

Michigan:

"This act shall not apply to persons who confine their ministrations to the sick or afflicted to prayer and without the use of material remedies."

Acts of 1913, Ch. 368, sec. 8.

New Jersey:

"The prohibitory provisions contained in this act as amended shall not apply 'to the ministration to, or the treatment of, the sick or suffering by prayer or spiritual means, whether gratuitously or for compensation, and without the use of any drug or material remedy.'"

Acts of 1915, Ch. 271, sec. 9.

North Carolina:

"Provided that this act shall not apply to any person who ministers to or cures the sick or suffering by prayer to Almighty God, without the use of any drug or material means."

Act of 1905, Ch. 697.

"This act admits Christian Scientists to practice and cure diseases."

State vs. Biggs, 133 N. Car. 729.

The exemption above quoted was omitted in the revision of the statutes of North Carolina in 1908, but by the act of 1913, Chapter 292, section 2, the following was inserted:

"The provisions of this section * * * shall not apply to Christian Scientists."

Utah:

"Nor shall anything in this title be construed to apply to those who heal only by spiritual means without pretending to have knowledge of the science of medicine."

"An exception put in the statute to permit treatment by Christian Science."

1907, Ch. 88, sec. 11, p. 99;

Re-enacted 1911, Ch. 93, sec. 1;

Comp. Laws (1907), sec. 1738;

Board vs. Freenor, 154 Pac. Rep. 941.

Vermont:

"The provisions of this chapter shall apply to persons professing and attempting to cure disease by means of 'faith cure,' 'mind healing,' or 'laying on of hands'; but shall not apply to persons who merely *practice* the religious tenets of their church without pretending a knowledge of medicine or surgery."

P. S. (1906), sec. 5371;

Amended by 1908, No. 151, sec. 5, p. 138.

Virginia:

"Nothing in this act shall be *construed* to affect * * * the *practice* of the religious tenets of any church in the ministration to the sick or suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided sanitary laws are complied with."

Acts of 1912, Ch. 237, sec. 11.

Washington:

"Nor shall this chapter be *construed* to discriminate against any particular school of medicine, of surgery, or osteopathy, or any system or mode of treating the sick or afflicted or to interfere in any way with the *practice* of religion; provided, that nothing herein shall be held to apply or to regulate any kind of treatment by prayer."

Laws 1909, Ch. 192, sec. 19.

Wisconsin:

"None of the provisions of this act or the laws of this state regulating the practice of medicine or healing shall be construed to interfere with the practice of Christian Science or with any

person who administers to or treats the sick or suffering by mental or spiritual means, nor shall any person who selects such treatment for the cure of disease be compelled to submit to any form of medical treatment."

Acts of 1915, Ch. 438, sec. 10.

See also the amendment by President Taft to his Executive Order of October 14, 1911, for the Panama Canal Zone, which provides that—

"Nothing in this order shall be *construed* to prohibit the practice of the religious tenets of any church in the ministering to the sick or suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided sanitary laws are complied with."

APPENDIX "B."

FROM THE NEW TESTAMENT.

The case of Peter's mother sick of a fever, where Jesus "touched her hand" and "healed all that were sick:"

Matt. 8: 14-17; Mark 1: 30-34; Luke 4: 38-40.

"Preaching the gospel of the kingdom, and healing all manner of disease and all manner of sickness among the people."

Matt. 4: 23.

The case of the leper where Jesus "stretched forth his hand and touched him, saying I will; be thou made clean:"

Matt. 8: 3; Mark 1: 41; Luke 5: 13.

The man sick of the palsy: "Arise, and take up thy bed, and go unto thy house:"

Matt. 9: 2-8; Mark 2: 1-12; Luke 5: 17-26.

The case of the woman with an issue of blood who touched his garment: "Thy faith hath made thee whole," and to Jairus' daughter, he took her by the hand: "Talitha cumi; Damsel, I say unto thee, Arise:"

Matt. 9: 18-26; Mark 5: 22-43; Luke 8: 41-56.

The two blind men: "He touched their eyes, saying according to your faith be it done unto you:"

Matt. 9: 27-31.

The man at the pool of Bethesda: "Arise, take up thy bed and walk:"

John 5: 1-16.

The case of the man with the withered hand healed on the Sabbath: "Stretch forth thy

hand. And he stretched it forth; and it was restored whole, as the other:"

Matt. 12: 9-14; Mark 3: 1-6; Luke 6: 6-16.

"He healed them all:"

Matt. 12: 15; Mark 3: 7-10; Luke 6: 17-19.

The case of the Centurion's servant: "Returning to the house found the servant whole:"

Matt. 8: 5-13; Luke 7: 1-10.

The widow's son at Nain, who had died: "Young man, I say unto thee, Arise:"

Luke 7: 11-17.

The conversation with the disciples of John the Baptist:

Matt. 11: 2-5.

"In that hour, he cured many of diseases and plagues and evil spirits; and on many that were blind, he bestowed sight."

Luke 7: 18-23.

"He laid his hands upon a few sick folk and healed them."

Mark 6: 5-6.

"Healing all manner of disease and all manner of sickness."

Matt. 9: 35-36.

Before the miracle of the loaves and fishes, "he had compassion on them and healed their sick."

Matt. 14: 13-14; Luke 9: 11; John 6: 2, 3.

See the message to Herod:

"Go and say to that fox, Behold, I cast out devils and perform cures today and tomorrow, and the third day I am perfected."

Luke 13: 32.

After the miracle of the loaves and fishes:

“As many as touched him were made whole:”

Matt. 14: 36; Mark 6: 56.

The case of the deaf man at Decapolis and the healing of many:

Mark 7: 31-37; Matt. 15: 30-31.

The blind man of Bethsaida:

Mark 8: 22-26.

The epileptic boy whom the disciples could not heal: “And he said unto them, this kind can come out by nothing, save by prayer:”

Mark 9: 29; Matt. 17: 14-20; Luke 9: 38-43.

The “man blind from his birth:”

John 9: 1-21.

The woman with the “spirit of infirmity” healed on the Sabbath:

Luke 13: 11, 12.

The man with the dropsy (also on the Sabbath): “And he took him and healed him and let him go:”

Luke 14: 1-5.

The raising of Lazarus:

John 11: 1-46.

The healing of the ten lepers:

Luke 17: 11-19.

The case of blind Bartimeus: “Go thy way: thy faith hath made thee whole:”

Mark 10: 46-52; Matt. 20: 29-34; Luke 18: 35-43.

The healing of the blind and the lame in the temple:

Matt. 21: 14.

UNCLEAN SPIRITS.

There are numerous instances through the new testament of the casting out of unclean spirits.

The Demoniac in the synagogue at Capernaum where Jesus gave the command: "Hold thy peace and come out of him:"

Mark 1: 21-28; Luke 4: 31-37.

Fulfilling Isaiah: "Himself took our infirmities and bare our diseases." "He cast out the spirits with a word and healed all that were sick."

Matt. 8: 14-17; Mark 1: 29-34; Luke 4: 38-41.

Speaks of those "possessed with devils," "epileptic" and "palsied," "and he healed them," "preaching and casting out devils:"

Matt. 4: 24; Mark 1: 39.

"Dumb man possessed with a devil."

Matt. 9: 32-33.

A similar case "blind and dumb"; where the "dumb man saw and spake:"

Matt. 12: 22, 23.

The case of the Gadarene Demoniacs who were sent into the swine:

Matt. 8: 28-34; Mark 5: 1-20; Luke 8: 26-39.

The Syrophoenician woman's daughter: "and her daughter was healed from that hour:"

Matt. 15: 21-28; Mark 7: 24-30.

The complaint of the disciples "that they saw one casting out devils:"

Mark 9: 38-40; Luke 9: 49-50.

The "devil that was dumb:"

Luke 11: 14-21.

FROM THE OLD TESTAMENT.

Exod. 15: 26. "For I am the Lord that healeth thee."

2 Kings, 20: 5. "Thus saith the Lord, the God of David thy father, I have heard thy prayer, I have seen thy tears; behold, I will heal thee."

2 Chron. 30: 20. "The Lord hearkened to Hezekiah and healed the people."

Ps. 107: 20. "He sent his word and healed them."

Is. 6: 10. "and understand with their heart and convert and be healed."

Is. 57: 19. "Saith the Lord: and I will heal him."

Jer. 30: 17. "I will heal thee of thy wounds, saith the Lord."

See also:

"to another the gifts of healing by the same spirit."

1 Cor. 12: 9; cf. 12: 28; 12: 30.

APPENDIX "C."

TENETS OF THE MOTHER CHURCH, THE FIRST
CHURCH OF CHRIST, SCIENTIST.

To be signed by those uniting with the First Church of Christ, Scientist, in Boston, Massachusetts.

1. As adherents of Truth, we take the inspired Word of the Bible as our sufficient guide to eternal Life.

2. We acknowledge and adore one supreme and infinite God. We acknowledge His Son, one Christ; the Holy Ghost or divine Comforter; and man in God's image and likeness.

3. We acknowledge God's forgiveness of sin in the destruction of sin and the spiritual understanding that casts out evil as unreal. But the belief in sin is punished so long as the belief lasts.

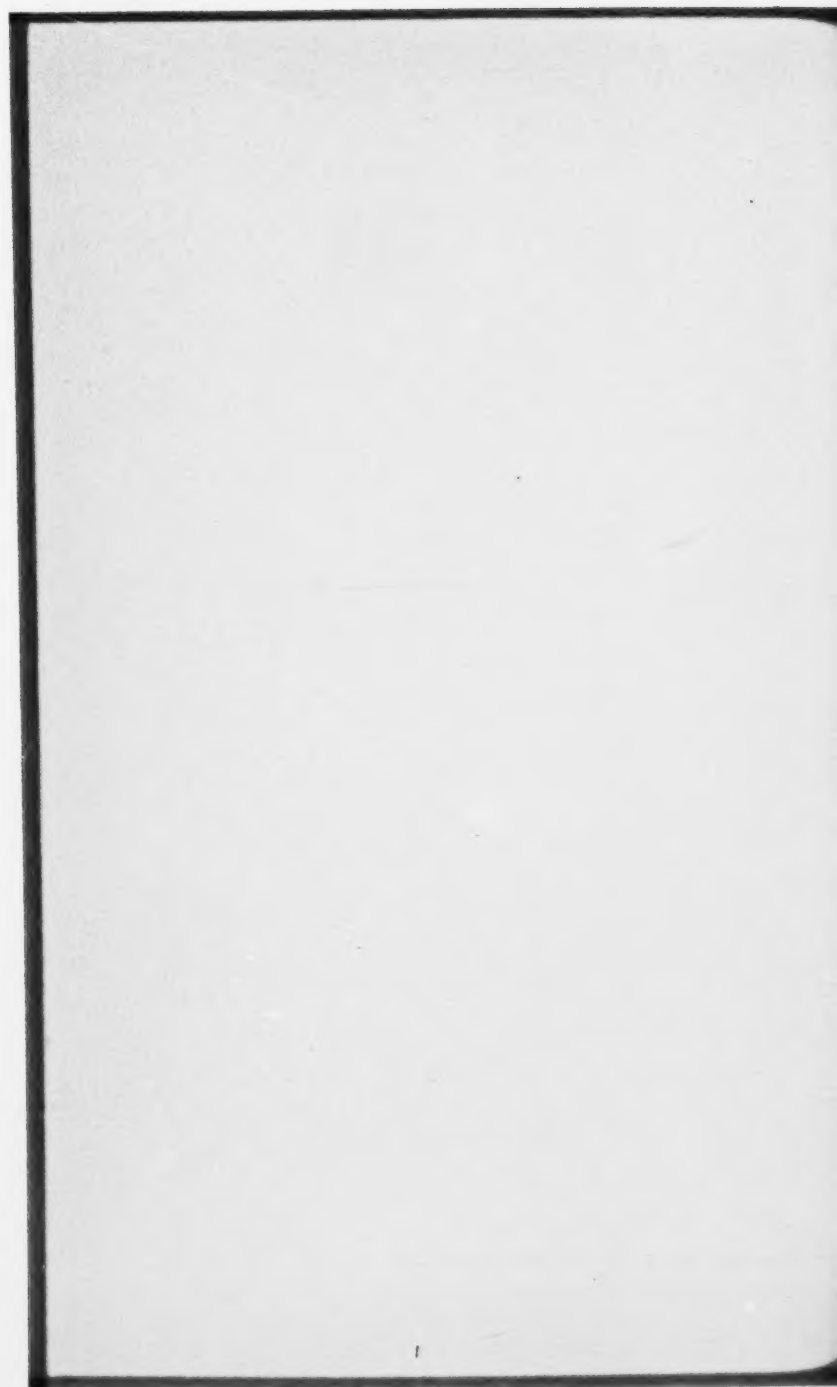
4. We acknowledge Jesus' atonement as the evidence of divine, efficacious Love, unfolding man's unity with God through Christ Jesus the Wayshower and we acknowledge that man is saved through Christ, through Truth, Life, and Love as demonstrated by the Galilean Prophet in healing the sick and overcoming sin and death.

5. We acknowledge that the crucifixion of Jesus and his resurrection served to uplift faith to understand eternal Life, even the allness of Soul, Spirit, and the nothingness of matter.

6. And we solemnly promise to watch, and pray for that Mind to be in us which was also in Christ Jesus; to do unto others as we would have them do unto us; and to be merciful, just, and pure.

MARY BAKER EDDY.

Page 15 of "Church Manual of The First Church of Christ, Scientist," in Boston, Massachusetts.



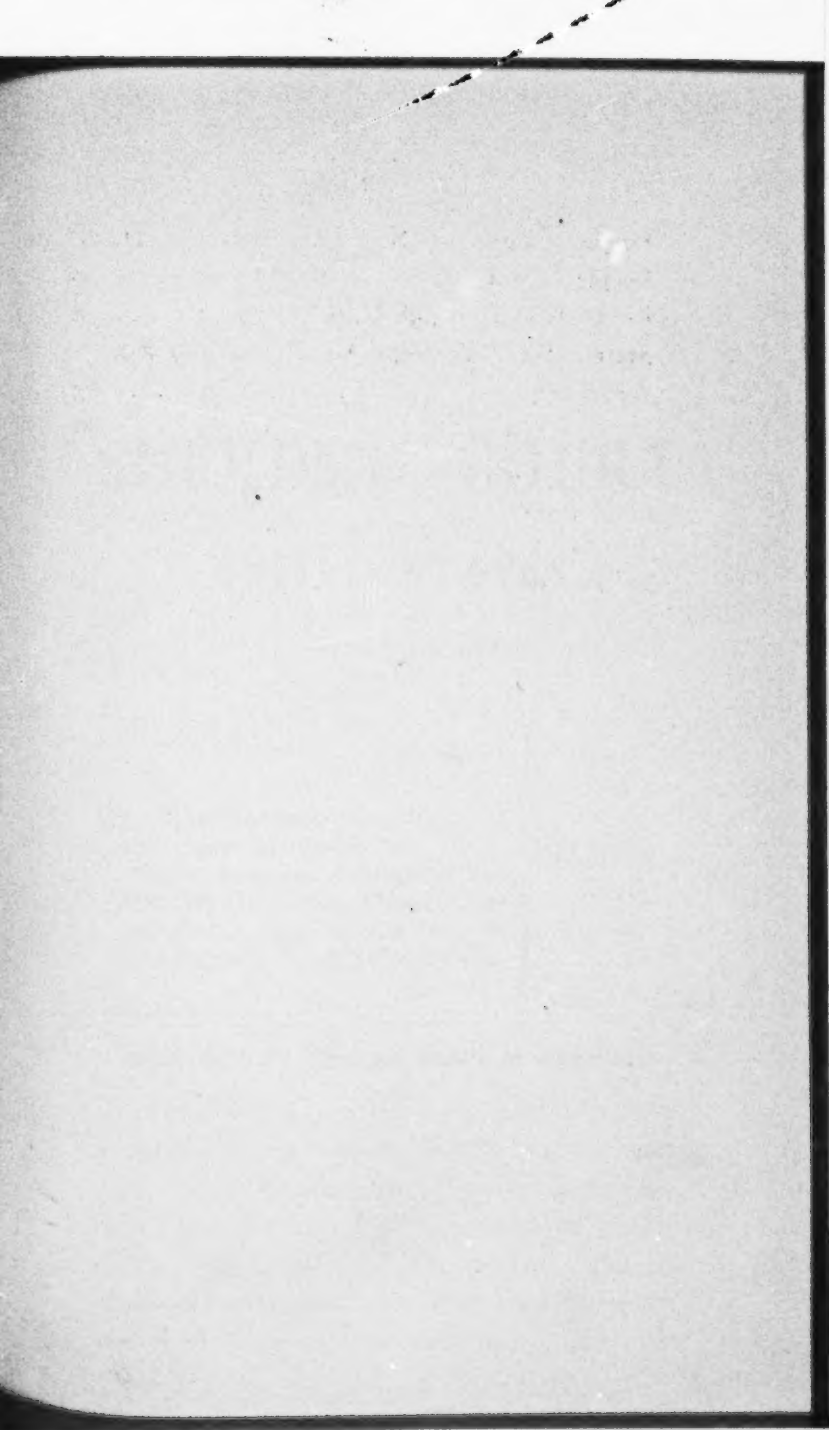
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IN THE
SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM 1916.

P. L. Crane,

Appellant,

vs.

**Hiram W. Johnson, Governor of
the State of California, U. S.
Webb, Attorney General of the
State of California, Thomas Lee
Woolwine, District Attorney of
Los Angeles County, California,**

Appellees.

No. 493.

Supplementary Brief on Behalf of Appellees.

Since filing our main brief herein, several important cases having direct bearing upon some of the questions here involved have been decided by the courts of last resort of certain of the states, and it is our desire to present these in order that the court may have the benefit of them in their decision of this case.

And in addition we have thought it advisable to obtain a statement from an authorized Christian Science source setting forth the view of that denomination on the question of prayer and the healing of the sick. We have therefore incorporated herein such a statement prepared by Mr. Henry Van Arsdale, Christian Science committee on publication for Southern California, whose duty it is, we are informed, to defend the practice of Christian Science against attacks through legal or legislative proceedings.

Treatment of the Sick by Prayer or in the Practice of a Religion Upheld by New York's Court of Last Resort.

The Court of Appeals of New York handed down a decision on October 3rd of this year, reported in 219 N. Y. Advance Sheets 98, in which the question of "treatment of the sick by prayer or in the practice of a religion" was fully considered and we quote at length therefrom:

"It does not appear that the defendant attempted to diagnose the diseases which the investigator stated to him that she had; he not only in substance denied that she had any disease, but asserted that they rested in her imagination or were mere evidence of a lack of true relation to her God. There was no inquiry on his part into the symptoms which the investigator claimed that she had as indicating the diseases.

There was no laying on of hands, manipulation, massage, or outward ceremonial. His direction to her to remove her glasses and take off a porous plaster which she asserted she had upon her back were, as also asserted by him, simply to bring about complete reliance by her upon the power and willingness of God to heal her diseases. Such directions were not, he asserts, intended as a prescription or as advice. It was a test of her faith. He, however, testified that prayer was a synonym for treatment. He habitually termed his interposition by prayer a treatment, and such it would seem to have been in the ordinary meaning of the word. He had a place where interposition by prayer to God could be sought through him at a price, either as a compensation or as an honorarium. He asserts that he made interposition with God by prayer to take away disease or what he alleges to be wrong relationships between persons having diseases and their God. His interposition with God, as explained by him, required Divine action that the inharmony between the Divine Being and the person who sought to be relieved of diseases and infirmities might be adjusted. The duties of the defendant as a practitioner would seem to have been to handle the claim of those that came to him with their ills with a view to obtaining a Divine cure. Such interposition under such circumstances was, in the language of the defendant himself, a 'treatment.'

"We are of the opinion that the defendant did 'treat' the investigator by 'any (some) means or method,' as the word is used in the general prohibition contained in the statute.

"The general and comprehensive definition of a person who practices medicine has an express exception. The descriptive words are preceded by the phrase 'except as hereinafter stated.' The exception concededly refers to the words in section 173 of the Public Health Law as follows: 'This article shall not be construed to affect * * * the practice of the religious tenets of any church.' *The exception includes every person in the practice of the religious tenets of any church and it is not in any way in conflict with the federal or state constitution.* The language quoted from said section 173 is not in any sense an affirmative license. It is, we repeat, an exception to the general prohibition. Whether the practice of the religious tenets of any church should have been excepted from the general prohibition against the practice of medicine unless the practitioner is registered and authorized so to do, or whether the exception should be continued therein, is a question for the legislature and not for the courts. The purpose of the general statute is to protect citizens and others of the state from being treated in their physical ailments and diseases by persons who have not adequate or proper training, education or qualifications to treat them.

"The tenets of a church are the beliefs, doctrines and creeds of the church. The exception relates to the tenets of the church as an organized body as distinguished from an individual. It does not relate to or except persons practicing in accordance with individual belief.

"It appears from the record that it is a tenet of the Christian Science church that

prayer to God will result in complete cure of particular diseases in a prescribed individual case. Healing would seem to be not only the prominent work of the church and its members, but the one distinctive belief around which the church organization is founded and sustained.

"It is claimed that the church extends its influence and spreads knowledge of its power by practical demonstration on the part of its sincere practitioners in securing the overthrow of moral, mental and physical disease. It disclaims any reliance upon skill, education or science. In view of the tenets of the Christian Science church the exception to the prohibition in the statute is stronger than the provision of the constitution of this state which we have quoted and which permits the free exercise and enjoyment of religious profession and worship without discrimination or preference.

"The exception in the statute is not confined to worship or belief but includes the practice of religious tenets. *If it was the intention of the Legislature to relieve members of the Christian Science and other churches from the provisions of sections 160 and 161 of the Public Health Law to the extent of permitting them within the rules, regulations and tenets of a church to maintain an office and there offer prayer for the healing of the diseases of those that might come to such church members for treatment, and the defendant has in good faith acted in accordance therewith, he is not guilty of the crime alleged in the indictment.*

"The Christian Science church is in terms expressly excepted from the prohibition contained in the medical practice acts

of many of the states. It is so expressly excepted in the statutes of Maine, New Hampshire, Massachusetts, Connecticut, North Carolina, North and South Dakota, Kentucky, Tennessee and Wisconsin.

"We think the exception in the statute in this state is broad enough to permit offering prayer for the healing of disease in accordance with the recognized tenets of the Christian Science church. It may be said that if the exception is so construed, it will lead to numberless persons assuming to cure diseases in the name of a church for the purpose of thereby maintaining a business and securing a livelihood. The religious tenets of a church must be practiced in good faith to come within the exception. When such practice is a fraud or pretense it is not excepted from the general prohibition. When wrong is practiced in the name of religion it is not protected by constitution or statute. (Reynolds v. U. S., 98 U. S. 145; Davis v. Beason, 133 U. S. 333; Mormon Church v. U. S., 136 U. S. 1.) Many of the decisions referred to by counsel may be explained by the fact that the persons therein severally considered were frauds and shams. (See People v. Spinella, 150 App. Div. 923; affd., 206 N. Y. 709.)

"A person should not be allowed to assume to practice the tenets of the Christian Science or any church as a shield to cover a business undertaking. When a person claims to be practicing the religious tenets of any church, particularly where compensation is taken therefor and the practice is apart from a church edifice or the sanctity of the home of the applicant, the question whether such person is within the exception

should be left to a jury as a question of fact. In this case the court charged the jury: 'If you find from the evidence in this case that this defendant did engage in the practice of medicine as alleged in the indictment, within the definition which I have given to you, it is no defense that he did what he did from any sense of duty, or that he did these acts in the practice of the religious tenets of the Christian Science church.' We are of the opinion that the court was in error in so charging the jury. *The exception was intended by the legislature to exclude from the prohibition the practice of the religious tenets of the Christian Science and other churches.* It was necessary, as we have seen, that the practice be of the tenets of a recognized church and the court instead of charging the jury as stated, should have left to the jury the question whether the defendant was in good faith practicing the tenets of such a church within the meaning of the statutory exception.

"The judgment should be reversed and a new trial ordered.

"Cuddeback and Cardoza, JJ., concur: Willard Bartlett, Ch. J., concurs in the following memorandum:

"*I concur in Judge Chase's construction of the statute. But I would go farther. I deny the power of the legislature to make it a crime to treat disease by prayer.*"

"Collin, J., not voting; Hogan, J., absent; Seabury, J., not sitting.

"Judgment reversed, etc."

Prayer Not Suggestion.

By Henry Van Arsdale, Christian Science Committee on Publication for Southern California.

The motive or instinct of prayer, the desire to avail one's self of the power of a supreme being, is probably as old as humanity. It is common to all and far antedates the patriarchs, the prophets, and the time of Jesus the Christ of our Bible. The reliability of prayer and its dependability, however, were not provable so long as polytheism prevailed, and power was ascribed to more than one deity. The unsatisfied desire for deific aid, addressed to gods that were no gods, led reflective men into a higher and yet higher consciousness and it gradually became apparent to human thought that power and causation were centered in one Being. The patriarch Abraham, the "friend of God," (James 2:23), was the greatest of these reflective minds. Abraham saw clearly that he must get away from the environments of polytheism if he was to grow in the understanding of the fact that there is but one God, and so he started on that journey described in the 12th chapter of Genesis. As the truths of monotheism grew in his consciousness prosperity followed in all that he did. Two incidents in this journey, which may be described as a passing from the belief in many gods into the understanding of one God, stand

out. First, the meeting with Melchizedek, from whom Abraham gained the thought of a "most high God, possessor of heaven and earth" (Gen. 14:19); he now knew definitely that there was one God, higher and more powerful than all other gods. Second, the full realization of this some years later, in his one-hundredth year, when this one God became fixed in his thought as, "I am the Almighty God; walk before me, and be thou perfect." (Gen. 17:1.) This final stage of growth as to the understanding of the nature of God was marked in the change of his own nature and name from Abram to Abraham. Enoch and Noah, the one fourteen hundred and the other six hundred years before this, had obtained some view of this omnipotent One; for it was said of each that he "walked with God," (Gen. 5:22 and 6:9). That is, they were in fellowship with God, Elohim. These patriarchs all proved the availability of the power of God on the human plane. Abraham was "justified by works," (James 2:21); Enoch did "not see death," (Heb. 11:5); Noah obtained a great promise for the human race. The Bible is the one book which contains the record of those historic characters whose spiritual perception enabled them to see clearly that there is but one Supreme Being, infinite, omnipotent and omnipresent. All Christian nations and churches assent to this. "Hear, O

Israel: The Lord our God is one Lord," is the Shema of the Hebrew. The Roman Catholic and the Protestant aver "I believe in God the Father Almighty, Creator of Heaven and Earth." (Creed.)

Prayer is communion with God; a coming into unity with God. It is desire which must first be thought before being uttered and is just as much available to the child, and the illiterate, as to the adult, and the scholar. The Hebrew verb translated "pray" in the majority of the Old Testament passages literally means "to judge one's self habitually;" in other words, a constant, silent self-examination that leads away from what Paul called the carnal mind, the "natural man" who is unable to receive or to know the things of the spirit of God, and leads to that condition of consciousness which Paul pressed upon the Philippians when he wrote them to "Let this mind be in you, which was also in Christ Jesus." Such a consciousness gets to know that the will of God is always done and that God's Kingdom is already come. From such a consciousness evil is disappearing and good is appearing. The right mental processes of this consciousness separate the real from the false, correct conclusions are drawn, and the mind is made fit to receive the good already conferred by a God who is Love, and

enabled to utilize this love to bring about harmony where before there was discord.

From the race of the patriarchs and the prophets came Jesus with a full and complete understanding and realization of the infinite One and His laws. Prayer is putting into practice the understanding of God which Jesus possessed and gave to the world so clearly that all may know the nature and character of God; His goodness, His love and His power. In brief it is summed up in John 15:7:

“If ye abide in me, and my words abide in you, ye shall ask what ye will, and it shall be done unto you.”

Another member of Jesus' household, James, his half-brother, wrote this to “the twelve tribes which are scattered abroad:”

“The prayer of faith shall save the sick, and the Lord shall raise him up * * * the effectual fervent prayer of a righteous man availeth much.”

The Christian Science concept of prayer is best presented by quoting from Jesus' words as appears in Mark 11:24.

“Therefore I say unto you, what things soever ye desire, when ye pray, believe that ye receive them, and ye shall have them.”

Both the Old and New Testaments are replete with exhortations to prayer. The Westminster Confession says:

"Prayer is by God required of all men. Prayer is to be made for things lawful, and for all sorts of men living."

In the introduction to the Roman Catholic "Sunday Missal," written by Rev. F. X. Lasance, occurs this:

"In thoroughly Catholic lands at the present day, as in England before the Reformation, every undertaking, every anxious aspiration is commended to Almighty God and His saints by the hearing of Mass."

The orthodox Hebrew regards prayer as a natural and necessary expression of his religious convictions and life.

Mrs. Eddy, the Discoverer and Founder of Christian Science, in her Message of 1901, page 19, says:

"Prayer brings the seeker into closer proximity with divine Love, and thus he finds what he seeks, the power of God to heal and to save."

In the International Encyclopedia, second edition, in the article on prayer, is this statement:

"It rests upon the appreciation of the loving care of the all-wise and all-powerful Father."

In The New Schaff-Herzog Encyclopedia of Religious Knowledge, published by Funk and Wagnalls, New York and London, 1911, Vol. IX, pp. 154 and 155, prayer is referred to as

that which brings to man the fulfillment of the Divine word and so makes God manifest to humanity; it is the medium through which man addresses the Father and so becomes conscious of the immanence of the Divine power and order. Quoting literally from the article:

"Healing in the apostolic church was inseparable from prayer. * * * There is no present need of arguing for the healing value of prayer. * * * Its therapeutic power cannot be doubted. * * * Prayer, as an address to God, implies that God is near to man, it involves certainty of the reality of God."

In the Christian Science textbook, "Science and Health with Key to the Scriptures," by Mary Baker Eddy, occur the following statements which are selected from many dealing with the efficacy of prayer:

"Consistent prayer is the desire to do right. Prayer means that we desire to walk and will walk in the light so far as we receive it, even though with bleeding footsteps, and that waiting patiently on the Lord, we will leave our real desires to be rewarded by Him.

"The world must grow to the spiritual understanding of prayer."

Line 32, page 9, to line 6, page 10.

"A great sacrifice of material things must precede this advanced spiritual understanding. *The highest prayer is not one of faith merely; it is demonstration.* Such prayer heals sickness, and must destroy sin

and death. It distinguishes between Truth that is sinless and the falsity of sinful sense”

Lines 1 to 6, inc., page 16.

“Only as we rise above all material sensuousness and sin, can we reach the heaven-born aspiration and spiritual consciousness, which is indicated in the Lord’s Prayer and which instantaneously heals the sick.”

Lines 20 to 23, inc., page 16.

The Christian Science view is further expressed by Mrs. Eddy in her book No and Yes, on page 39:

“Prophet and apostle have glorified God in secret prayer, and He has rewarded them openly. Prayer can neither change God, nor bring His designs into mortal modes; but it can and does change our modes and our false sense of Life, Love, and Truth, uplifting us to Him. Such prayer humiliates, purifies, and quickens activity, in the direction that is unerring.

“True prayer is not asking God for love; it is learning to love, and to include all mankind in one affection. Prayer is the utilization of the love wherewith He loves us. Prayer begets an awakened desire to be and do good. It makes new and scientific discoveries of God, of His goodness and power. It shows us more clearly than we saw before, what we already have and are; and most of all, it shows us what God is.”

Consciousness thus imbued with a knowledge of the spiritual law acts with certainty, and as

the power and perfection of Divine Love is realized, this realization must be and is manifested in human experiences. The healing work thus accomplished is in no sense akin to suggestion; to faith healing as commonly understood; to efforts to manipulate and adapt the thought of the sick person to the stronger thought of another; to what has come to be known as drugless healing; to hypnosis; to mesmerism; or to any form of psycho-therapy. The divine Mind, acting through man and reflected by man, results in a purification of thought and purpose, all sense of evil is expelled from consciousness and man sees himself as God's own image, apprehends the fact of his spiritual being as a son of God, and so is liberated. In other words, as a result of the use of right prayer, the prayer of understanding, man is enabled to know the truth, which Christ Jesus said he should know, and the truth thus known frees him as Jesus said it would. The mental process is not one of suggestion, it is scientific Christianity, exact, demonstrable knowledge of God and His laws: laws which are unerring, constant, ever-available and universal in their application. In short, the mental process of prayer is one of true religious activity, the results of which are certain. The Apostle John stated it as follows:

"Whatsoever we ask, we receive of Him, because we keep His commandments, and do those things that are pleasing in His sight." (I John 3:22.)

Below are numerous quotations from various sources showing the universality of and belief in the efficacy of prayers for the sick:

The "Union Prayer Book for Jewish Worship," edited and published by the Central Conference of American Rabbis, in part 2, at page 50, provides:

"Thou art omnipotent, O Lord, and mighty to save. In Thy kindness Thou sustaineth the living, upholdeth the fallen, healeth the sick, and setteth the captive free"

In the same volume, at page 206, the following appears:

"Give health to my sick heart and heal my wounds."

In a volume entitled "Judaism," by Israel Abrahams, M. A., at page 40, the following appears:

"The liturgy of the Synagogue has been well termed a precipitate of all Jewish teaching as to God. He is the Great, the Mighty, the Awful, the Most High, the King. But He is also the Father, Helper, Deliverer, the Peace-Maker, Supporter of the weak, Healer of the sick."

Memoranda of Prayers, referring to the sick, from The Sunday Missal, compiled by Rev.

F. X. Lasance, published by Benziger Brothers, New York, Cincinnati, Chicago, "Printers to the Holy Apostolic See," 1916:

Page 85, under the title, Commemoration of the Living:

"Be mindful, O Lord, of Thy servants,
and of * * * the health and welfare
they hope for. * * *"

Page 91, under the title, Commemoration of the Dead:

"Deliver us, we beseech Thee, O Lord,
from all evils, past, present, and to come
* * * that through the help of Thy
bountiful mercy we may always be free
from sin and secure from all disturbance."

Page 478, under the title, Mass for the Sick;
sub-title, A Mass that has come down to us
from primitive times:

"O Almighty and everlasting God, the
eternal salvation of them that believe, hear
our prayers for Thy sick servants for whom
we implore Thy mercy, that with restored
health they may render Thee thanks in
Thy Church. Through Our Lord."

Page 530, under the title, Evening Prayers;
sub-title, Pray for the Living and for the Faith-
ful Departed:

"Pour down Thy blessings, O Lord, upon
all my relations, friends, and benefactors;
and upon my enemies, if I have any. Help
the poor and sick, and those who are in
their last agony. O God of mercy and

goodness, have compassion on the souls of the faithful in purgatory; put an end to their sufferings, and grant to them eternal light, rest, and happiness. Amen."

From the Confession of Faith, known as the Westminster Confession:

"Prayer is an offering up of our desires unto God. We are to pray for ourselves, our brethren and for all sorts of men living. We are to pray for our own or others' good. We are to pray with a lawful apprehension of the majesty of God; with understanding."

Of the Visitation of the Sick:

"When persons are sick it is their duty to send for their minister and make known to him with prudence their spiritual state, and it is his duty to visit them at their request and to apply himself with all tenderness and love; to administer spiritual good to their immortal souls. It will be proper to administer consolation and encouragement to him (the sick person), by setting before him the freeness and richness of the grace of God; the all sufficiency of the righteousness of Christ; and the supporting promises of the Bible. The minister must endeavor to guard the sick person against unreasonable fears of death and desponding discouragements. In one word it is the minister's duty to administer to the sick person instruction, conviction, support, consolation, encouragement, as his case may seem to require. At the proper time, when he is most composed, a minister shall pray with and for him."

From the decision rendered by the New York Court of Appeals on October 3rd, this year, in the case of *People v. Cole*, which sustained the legality of Christian Science practice, the following is quoted:

"It appears from the record that it is a tenet of the Christian Science church that prayer to God will result in complete cure of particular diseases in a prescribed, individual case. Healing would seem to be not only the prominent work of the church and its members, but the one distinctive belief around which the church organization is founded and sustained."

For the information of the court will say that every person who becomes a member of any Christian Science Church which is a part of the organized movement headed by The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, must subscribe to the tenets hereinabove referred to and fully set out in appellees' main brief as "Appendix C."

The branch churches of this movement have been established in every city of importance in the United States and in practically every country of the world, and those who depend upon the ministrations of Christian Science for healing may be numbered in the millions. Thus the importance of this question may be readily seen.

By reference to the Christian Science Journal, a monthly periodical established in the year 1883 and published by The Christian Science Publishing Society, one of the activities of The Mother Church above referred to, a list of the Christian Science Churches constituting the churches of this movement may be found, and also a list of the recognized Christian Science practitioners, whose qualifications to practice this method of healing are inquired into before their names are inserted therein.

Liberal View of Courts and Legislatures in the Matter of the Regulation of the Healing of the Sick as Shown by Statutes and Decisions Affecting the Subject.

The medical practice acts of twenty-six states and territories of the Union contain exemption clauses in favor of those who heal by prayer or in the course of the practice of a religion, and Ex-President Taft, by a special amendment to his executive order of October 14, 1914, for the Panama Canal Zone, adopted for the purpose, exempted such treatment of the sick in the following language:

“Nothing in this order shall be *construed* to prohibit the practice of the religious tenets of any church in the ministering to the sick or suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or

for compensation, provided sanitary laws are complied with."

For the convenience of the court we have added to our main brief as Appendix "A" the clauses of the medical practice acts of the various states providing for the exemption of those who employ prayer only in their treatment and those who heal in the course of the practice of a religion. Such acts have been held to be constitutional in other states than California, as is more fully set out hereinafter.

As indicative of the liberal view that the courts are taking in construing the medical practice acts of the various states, we cite the very recent case of *State v. Fite*, decided by the Supreme Court of the state of Idaho on October 9, 1916, and reported in *Pacific Reporter Advance Sheet*, Volume 159, No. 9, at page 1183.

This is a case in which a person employed in what is known as the chiropractic system of healing was prosecuted for a violation of the medical practice act of that state, and it was presented to the Supreme Court on appeal from a judgment of conviction.

The record disclosed that appellant, who is a chiropractor, had no license to practice medicine and surgery; that he administered chiropractic treatments to certain persons and

charged and received compensation therefor; that these treatments consisted in the manipulation of the region of the patient's spinal column with the hands of the practitioner, and that no instruments were used nor were any drugs or medicine prescribed or given. The evidence did not tend to show that appellant held himself out to the public as a physician and surgeon or either, or that he investigated or diagnosed or offered to investigate or diagnose any physical or mental ailment of any person with a view to relieving the same, as is commonly done by physicians and surgeons, nor did he suggest, recommend, prescribe or direct for the use of any person, sick, injured or deformed, any drug, medicine, means or appliances for the intended relief, palliation or cure of the same, unless a chiropractic treatment as above described can be construed to be a "means or appliance" in the sense in which these words were employed by the legislature in section 1353 of the Political Code of the state of Idaho, being a part of the medical practice act of that state.

Said section 1353 reads as follows:

"Any person shall be regarded as practicing medicine and surgery, or either, who shall advertise in any manner or hold himself or herself out to the public as a physician and surgeon or either, in this state,

or who shall investigate or diagnosticate or offer to investigate or diagnosticate any physical or mental ailment of any person with a view of relieving same as is commonly done by physicians and surgeons or suggest, recommend, prescribe or direct for the use of any person, sick, injured or deformed, any drug, medicine, means or appliance for the intended relief, palliation or cure of the same, with the intent of receiving therefor either directly or indirectly any fee, gift or compensation whatsoever; provided, however, this chapter shall not apply to dentists and registered pharmacists or midwives in their respective professions, nor to services rendered in cases of emergency where no fee is charged."

The court stated that the sole question before it was the proper interpretation of this section. After citing many cases involving the construction of medical practice acts of other states, the court had the following to say:

"Constitutional provisions and statutory enactments should be read and construed in the light of conditions of affairs and circumstances existing at the time of their adoption. (Citing *Toncray v. Budge*, 14 Idaho 621, 95 Pac. 26.)"

The court then presented a history of the section under consideration at much length, and finally concluded with the following:

"We conclude that the practice of chiropractic is not the practice of medicine and surgery as defined in section 1353. *supra*,

and that appellant was erroneously convicted.

"The judgment of the trial court is reversed with instructions to dismiss the action."

The Acts Do Not Create a Monopoly in Favor of Those Who Heal by Christian Science.

In our main brief under this point we cited religious authorities of different denominations showing how generally the element of the healing of the sick was included in their rituals, creeds or prayers, and in further support of this point we cite additional religious authorities:

"The Catholic Encyclopedia," volume 3, page 589, treating of the subject of "Charismata," in defining this term says:

"* * * denotes any good gift that flows from God's benevolent love unto man; a divine grace or favor, ranging from redemption and life eternal to comfort in communion with brethren in the faith."

Paragraph 10, treating of same subject, provides:

"*Healing* is singled out by St. Paul among the miracles because it was probably the most frequent and most striking."

In volume 5 of the same work, at page 716, treating of the subject "Extreme Unction," it is said:

"Extreme unction is a sacrament of the

New Law instituted by Christ to give spiritual aid and confer a perfect spiritual health, including, if need be, the remission of sins, and also, conditionally to *restore bodily health*, to Christians who are seriously ill; it consists essentially in the unction by a priest of the body of the sick person, accompanied by a suitable form of words."

In the same volume and treating of the same subject under the subdivision entitled "Actual Right of Administration," it is said:

"'Holy Father, Physician of souls and bodies, Who didst send Thy Only-Begotten Son as the healer of every disease and our deliverer from death, heal also Thy servant N. from the bodily infirmity that holds him, and make him live through the grace of Christ, by the intercession of (certain saints that are named) and of all the saints.'"

At page 723 of the same volume, and treating of the same subject, it is said:

"* * * and Jonas, Bishop of Orleans, in his '*Institutio Laicalis*' (about 829) after reprobating the popular practice of recurring in sickness to magical remedies, says: 'It is obligatory on anyone who is sick, to demand, not from wizards and witches, but from the church and her priests, the unction of sanctified oil, a remedy which (as coming) from our Lord Jesus Christ, will benefit him not only in body, but in soul.'"

Constitutional Right of Religious Freedom.

The Federal Constitution guarantees the freedom of the practice of religion in amendment 1 by the following language:

“Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof.”

The California Constitution provides as follows regarding the freedom of religious practices:

“The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this state.”

Art. 1, sec. 4, Cal. Cons.

Chief Justice Willard Bartlett of the Court of Appeals of New York, in a concurring opinion in the case of *People v. Cole*, hereinabove more fully quoted, said:

“I concur in Judge Chase’s construction of the statute. But I would go farther. I deny the power of the legislature to make it a crime to treat disease by prayer.”

As was said by the Supreme Court of Kansas in discussing the effect of a clause in their medical practice act protecting the practice of religious beliefs:

“The express exclusion of religious belief in the application of the law was hardly necessary. Religious freedom is guaranteed by the constitution, and without men-

tion in the statute would have been implied,”

State of Kansas v. Wilcox, 64 Kan. 789,
794.

The principle of religious liberty has induced many legal immunities and has been jealously guarded by the courts.

In the case of Hoeffler v. Clogan, 171 Ill. 462, the court said:

“The doctrine of superstitious uses arising from the statute 1 Edward VI, chap. 14, under which devises for procuring masses were held to be void, is of no force in this state and has never obtained in the United States. In this country there is absolute religious equality, and no discrimination, in law, is made between different religious creeds or forms of worship. It cannot be denied that bequests for the general advancement of the Roman Catholic religion, the support of its forms of worship or the benefit of its clergy, are charitable, equally with those for the support or propagation of any other form of religious belief or worship. The nature of the mass, like preaching, prayer, the communion, and other forms of worship, is well understood. It is intended as a repetition of the sacrifice on the cross, Christ offering Himself again through the hands of the priest and asking pardon for sinners as He did on the cross, and it is the chief and central act of worship in the Roman Catholic Church. It is a public and external form of worship,—a ceremonial which constitutes a visible action. It may

be said for any special purpose, but from a liturgical point of view every mass is practically the same. The Roman Catholic Church believes that christians who leave this world without having sufficiently expiated their sins are obliged to suffer a temporary penalty in the other, and among the special purposes for which masses may be said is the remission of this penalty. A bequest for such special purpose merely adds a particular remembrance to the mass, and does not, in our opinion, change the character of the religious service and render it a mere private benefit. While the testator may have a belief that it will benefit his soul or the souls of others doing penance for their sins, it is also a benefit to all others who may attend or participate in it. An act of public worship would certainly not be deprived of that character because it was also a special memorial of some person, or because special prayers should be included in the services for particular persons. Memorial services are often held in churches, but they are not less public acts of worship because of their memorial character, and in *Duror v. Motteux, supra*, the trust for the preaching of an annual sermon in memory of the testator was held to be a charitable use. The mere fact that the bequest was given with the intention of obtaining some benefit or from some personal motive does not rob it of its character as charitable. The masses said in the Holy Family Church were public, and the presumption would be that the public would be admitted, the same as at any other act of worship of any other christian sect. The bequest is not only for an act of religious worship, but it is an aid

to the support of the clergy. Although the money paid is not regarded as a purchase of the mass, yet it is retained by the clergy, and, of course, aids in the maintenance of the priesthood."

Also see:

Kerrigan v. Tabb, 29 Atl. 701;

Sherman v. Baker, 20 R. I. 613;

Cooley's Constitutional Limitations, 1890
Ed. at pages 575-7.

Statutes of a Legislative Body Presumed to be Valid.

To justify a court in pronouncing a legislative act unconstitutional, the case must be so clear as to be free from doubt, and the conflict of the statute with the constitution must be irreconcilable, because it is but decent respect to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed to presume in favor of its validity until the contrary is shown beyond reasonable doubt.

Sinking-Fund Cases, 99 U. S. 718;

Fairbank v. U. S., 181 U. S. 283.

Conclusion.

In closing we will present in a few words a logical statement of the points presented and the conclusion which we think must be drawn therefrom.

In the first place we contend that the only question which this court is called upon or

indeed can determine is whether or not the trial court properly denied the temporary injunction, and this we believe is amply supported by the authorities presented; therefore, did the court err in rendering its judgment? This we feel sure cannot be concluded from a reading of complainant's bill and an examination of the authorities cited on that point. This, then, we believe ends the matter, and this court should either sustain or reverse the decision of the trial court and remand the case for further proceedings.

Notwithstanding our view of the matter, as above indicated, we felt that wisdom and proper caution dictated a thorough and exhaustive consideration of the main question in dispute in this case, especially in view of the importance of the question involved and the fact that this is the first time such a question has been presented to this court.

We have first shown by ample authorities that the clause in question of the Medical Practice Acts does not discriminate in favor of or against anyone, and we have particularly shown that no monopoly is created in favor of those who heal by means of Christian Science, because the provision expressly states that all persons who treat by prayer or in the course of the practice of religion are exempted, and religious authorities are presented in support of the fact that this element is recognized in prac-

tically every important religious denomination.

We further show that similar exemptions appear in the medical practice acts of twenty-six states and territories of the United States, and also that, where the question has been raised, such acts have been held constitutional and valid. We cite at considerable length the very recent decision of the District Court of Appeals of the state of New York, entitled *State v. Cole*, because of its direct bearing on the question of the legality of treatment by prayer and particularly call the court's attention to that decision.

We next present in brief form a history of the growth of prayer and the dependence of mankind thereon, together with numerous citations from eminent authorities showing the efficacy of prayer in meeting the human needs. In point of time these citations begin with the Bible and end with those from the Christian Science text book, *Science and Health, with Key to the Scriptures*, by Mary Baker Eddy. In further support of the fact that healing by prayer is reasonable and natural, we have presented numerous citations from the Bible in "Appendix A" of our main brief, and if there is still a question in the mind of anyone as to whether or not the prayer of Christian Science heals the sick, ample evidence may be adduced.

We then present authorities to show that courts have recognized the distinction between healing by spiritual means or prayer, and other

means, and also that treatment by prayer or in course of the practice of a religion does not constitute the practice of medicine.

In "Appendix C" of our main brief we have presented the tenets of the Christian Science Church, and in the body of the brief present authorities to the effect that this court can take judicial notice of the existence of the Christian Science religion and the tenets thereof.

Authorities are then presented to show that reasonable medical legislation is salutary, and, that based upon reasonable class differences, certain discriminations are not only justified but demanded, and lastly, the point is presented that the statutes of a legislative body are presumed to be valid and that in the construction of same every doubt is resolved in their favor.

Therefore, we believe that should the court consider the question of the constitutionality of the acts here in question, only one conclusion can follow, and that is that they are constitutional and valid.

Dated November 17, 1916.

U. S. WEBB,

Attorney-General of the State of California;

ROBERT M. CLARKE,

Deputy Attorney-General;

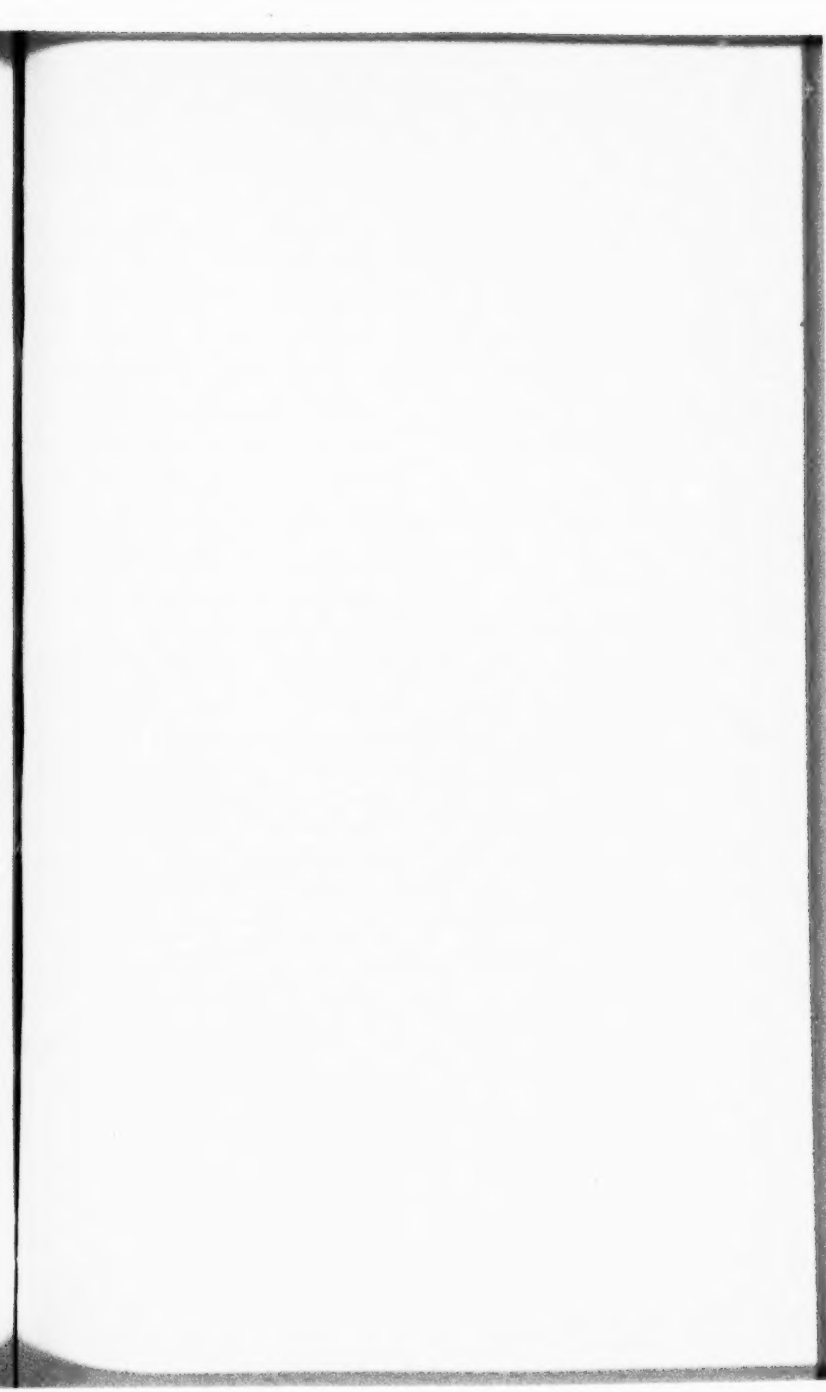
THOMAS LEE WOOLWINE,

District Attorney of Los Angeles County, California, and

GEORGE E. CRYER,

Assistant District Attorney of Los Angeles County, California,

Solicitors for Appellees.



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CRANE v. JOHNSON, GOVERNOR OF THE STATE
OF CALIFORNIA, ET AL.APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

No. 493. Argued December 12, 1916.—Decided January 8, 1917.

The distinction made in the law of California (Laws 1913, c. 354; as amended by Laws 1915, c. 105), passed for the regulation of the practice of medicine and other modes of healing, between treatment employing prayer and religious faith only and a species of treatment which, while reliant upon the creation of mental states and processes in the patient, involves for its proper application special skill and experience and ability to diagnose diseases—is not necessarily an arbitrary distinction denying equal protection of the laws under the Fourteenth Amendment.

When a party assails a state law upon the ground that it violates his rights under the Fourteenth Amendment, the law will be considered only in its application to his situation as revealed in the record, and all uncertainties of fact will be resolved against the complainant and in favor of the law.

233 Fed. Rep. 334, affirmed.

THE case is stated in the opinion.

Mr. Tom L. Johnston for appellant.

Mr. Robert M. Clarke and *Mr. Thomas Lee Woolwine*, with whom *Mr. U. S. Webb*, Attorney General of the State of California, and *Mr. George E. Cryer* were on the briefs, for appellees.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Appeal from an order denying an interlocutory injunction, three judges sitting. The court took jurisdiction of

the action, citing *Raich v. Truax*, 219 Fed. Rep. 273, 283; *Truax v. Raich*, 239 U. S. 33; but denied the injunction on the ground that the averments of the complaint did not justify it.

Complainant is a drugless practitioner, he avers (we state the facts averred narratively), and has practiced his profession in the City and County of Los Angeles for the last seven years and is dependent upon it for making a living. He does not employ either medicine, drugs or surgery in his practice, nor is there anything harmful in it to the individual or dangerous to society; but he does employ in practice faith, hope, and the processes of mental suggestion and mental adaptation.

Under a statute of the State that went into effect August 10, 1913, amended in 1915, a board of medical examiners was created which was empowered to prescribe a course of study and examination for those practicing medicine (using this word in a broad sense for convenience) and to issue certificates of qualifications and licenses.

Three forms of certificates were required to be issued, first, a certificate authorizing the holder thereof to use drugs, or what are known as medicinal preparations, in or upon human beings and to perform surgical operations, which certificate shall be designated "physician and surgeon certificate." Second, a certificate authorizing an opposite treatment to that which the first certificate authorized (we are using general descriptions), which certificate shall be designated "drugless practitioner certificate." Third, a certificate authorizing the holder to practice chiropody. And the statute also provides for the issuance of what it designates as a "reciprocity certificate." Any of these certificates, on being recorded in the office of the county clerk, as provided in the act, shall constitute the holder thereof a duly licensed practitioner in accordance with the provisions of his certificate.

Applicants must file with the board testimonials of good

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moral character and diplomas of a school or schools and, in addition, each applicant for a "physician and surgeon certificate" must show that he has attended four courses of study, each to have been not less than 32 weeks' duration, with some other additions; and each applicant for a "drugless practitioner certificate" must show that he has attended two courses of study, each of such courses to have been of not less than 32 weeks' duration, but not necessarily pursued continuously or consecutively, and at least ten months shall have intervened between the beginning of any course and the beginning of the preceding course; and the course in chiropody is to be of not less than 39 weeks' duration consisting of not less than 664 hours. There is a provision that, in lieu of a diploma or diplomas and preliminary requirements in the other courses, if the applicant can show to the board that he has taken the courses required by the statute in a school or schools approved by the board totaling not less than 64 weeks' study of not less than 2,000 hours for a "drugless practitioner certificate" or 128 weeks' study of not less than 4,000 hours for a "physician and surgeon certificate," he shall be admitted to examination for his form of certificate.

The statute sets out the course of instruction which the respective applicants must have pursued, giving the course that is necessary for a "physician and surgeon certificate" and the course for a "drugless practitioner certificate." The descriptions are very elaborate and technical. The statute also prescribes the manner of examination, states the exemptions from its provisions, the penalties for its violation, and for what conduct and upon what conditions the certificates may be revoked. Among the latter is the following:

"Ninth. The use, by the holder of a 'drugless practitioner certificate,' of drugs or what are known as medicinal preparations, in or upon any human being, or the

severing or penetrating by the holder of said 'drugless practitioner certificate' of the tissues of any human being in the treatment of any disease, injury, deformity, or other physical or mental condition of such human being, excepting the severing of the umbilical cord."

By § 22 of the original act (unaffected by the Act of 1915) it is provided: "Nor shall this act be construed so as to discriminate against any particular school of medicine or surgery, or any other treatment, nor to regulate, prohibit or apply to, any kind of treatment by prayer, nor to interfere in any way with the practice of religion."

It is alleged that the statute violates the Fourteenth Amendment of the Constitution of the United States, especially the equal protection clause thereof, in that it imposes greater burdens upon complainant than upon others in the same calling and position. That it discriminates in favor of the Christian Science drugless practitioner, distinguishes between the treatment of the sick by prayer, the treatment of the sick by faith, mental suggestion and mental adaptation, and treatment by laying on of hands, anointing with Holy oil or other kindred treatment.

Complainant does not employ prayer in the treatment of disease and is, therefore, not exempt from examination by the medical board, and is subject, therefore, to the penalties of the act if he practices his profession for which he has fitted himself by study and practice, and upon which he is dependent and by reason of his age he is in large measure unable to take up any new branch of work. That defendants, appellees here, are threatening prosecutions under the act and he is without remedy at law.

There is an allegation that the Supreme Court of the State of California has decided that the statute is not offensive to the Fourteenth Amendment, in *habeas corpus* proceedings prosecuted by one Chow Juyan, who was

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convicted of practicing some form of Chinese healing which was adjudged a violation of the act.

The allegations of the bill set forth complainant's particular grievance to be that the statute discriminates between forms of healing the sick by the use of prayer and other drugless methods, and invoke the equal protection clause of the Fourteenth Amendment of the Constitution of the United States. In other words, he attacks the classification of the statute as having no relation to the purpose of the legislation. Of course, complainant is confined to the special discrimination against him; he cannot get assistance from the discrimination, if any exist, against other drugless practitioners. The case, therefore, is brought to the short point of the distinction made between his practice and certain forms of practice, or, more specifically, between his practice of drugless healing and the use of prayer.

The principle of decision needs no exposition and the only question is whether it was competent for the State to recognize a distinction in its legislation between drugless healing as practiced by complainant and such healing by prayer. That there is a distinction between his practice and that of prayer, complainant himself, it seems to us, has charged in his bill. He has not only charged that he does not employ either medicine, drugs or surgery in his practice but that he does employ faith, hope and the processes of mental suggestion and mental adaptation. These processes he does not describe. Presumably they are different from healing by prayer, different from the treatment by Christian Science. But he alleges that for his practice he has become "particularly fitted, . . . by many years of study and practice therein." In other words, the treatment is one in which skill is to be exercised and the skill can be enhanced by practice, and the objects of the treatment are diseased human beings whose condition is to be diagnosed. To treat a disease there

must be an appreciation of it, a distinction between it and other diseases, and special knowledge is therefore required. And this was the determination of the State; but it determined otherwise as to prayer, the use of which, it decided, was a practice of religion. We cannot say that the State's estimate of the practices and of their differences is arbitrary and therefore beyond the power of government. And this we should have to say to sustain the contentions of complainant, and say besides, possibly against the judgment of the State, that there was not greater opportunity for deception in complainant's practice than in other forms of drugless healing.

Because of our very recent opinions we omit extended reply to the argument of counsel and the cases cited by him, not only of the general scope of the police power of the State but also of the distinctions which may be made in classifying the objects of legislation. And for like reason we do not review or comment upon the cases cited in opposition to complainant's contentions.

It is to be observed that the order of the court was put upon the narrow ground of the averments of the complaint, no opinion beyond such averments being expressed.

Decree affirmed.